REPORT
on the activity of THE COMMISSIONER FOR HUMAN RIGHTS
in the area of equal treatment
for 2015
and on the observance of the principle of equal treatment in the Republic of Poland

This Report implements Article 212 of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No. 78, item 483, as amended). This provision states that the Commissioner shall annually inform the Sejm and the Senate about his/her activities and the observance of human and civil rights and freedoms, as well as – in accordance with Article 19(1)(1) – (3) of the Act of 15 July 1987 on the Commissioner for Human Rights (Journal of Laws of 2014, item 1648, as amended) – provide information on the conducted activities in the field of equal treatment and on the results thereof, inform on observing the principle of equal treatment in the Republic of Poland, and report the conclusions and recommendations concerning measures, which should be undertaken to ensure compliance with the principle of equal treatment. In addition, the Report implements Article 19(2) of the Act on the Commissioner for Human Rights, which imposes an obligation to make the information public.

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Introduction

Equality before the law is one of the fundamental principles of the protection of human rights, and its observance constitutes a condition for the exercise of other fundamental rights. The requirement of equal treatment is one of the pillars of both national legislation and instruments of international law. The Polish Constitution defines the general concept and scope of the principle of equal treatment and formulates a prohibition against discrimination in political, social and economic life based on any grounds[1], as well as calls for equal rights for women and men[2]. According to the established case-law of the Constitutional Tribunal, the principle of equal treatment expressed in Article 32 of the Constitution of the Republic of Poland means that all individuals (recipients of legal norms) characterised by a significant (relevant) feature to an equal extent, should be treated equally, according to the same measure, without discriminatory or favouring differentiations. At the same time, the principle of equal treatment implies a difference in treatment between those individuals, which do not share a common relevant feature[3].

Discrimination, however, is a type of qualified form of unequal treatment and means worse treatment of an individual due to some property or personal trait, without rational justification. As rightly pointed out by the Supreme Court: *the negative distinction of discrimination as a qualified form of unequal treatment serves to prevent the most socially reprehensible and harmful manifestations of this phenomenon*[4]. The most frequently mentioned grounds for discrimination include: sex, race, ethnic origin, nationality, citizenship, religion, belief, ideology, disability, age, sexual orientation or gender identity, but may also include other personal characteristics, for example: appearance, social origin or material status.

In the context of international law, the principle of equal treatment has been known since the adoption of the Universal Declaration of Human Rights[5]. Pursuant to Article 2 of the Declaration, *everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*. The obligation to respect the principle of equal treatment was also established in international agreements that bind Poland and were adopted within the framework of the United Nations, i.e. in the International Covenant on Civil and Political Rights and in the International Covenant on Economic, Social and Cultural Rights of 1966. Under the above agreements, Poland is required to ensure equal right of men and women to enjoy all rights laid down in the

1 Article 32 of the Constitution of the Republic of Poland.
2 Article 33 of the Constitution of the Republic of Poland.
3 Among others: Constitutional Tribunal in its judgement of 22 February 2005 in case K 10/04, OTK 17/2/A/2005. See also: judgement of the Constitutional Tribunal of 23 October 2001 in case K 22/01, OTK 7/215/2001.
4 See, among others: judgement of the Supreme Court of 21 January 2011 in case II PK 169/10, judgement of the Supreme Court of 20 May 2011 in case II PK 288/10.
5 The Universal Declaration of Human Rights adopted in Paris by the United Nations General Assembly on 10 December 1948.

Covenants, as well as to observe the principle of non-discrimination, regardless of differences such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other circumstances[6].

Poland's commitments in the implementation of the principle of equal treatment and non-discrimination are also derived from other core human rights treaties, such as: the Convention relating to the Status of Refugees of 1951[7], the International Convention on the Elimination of All Forms of Racial Discrimination of 1965[8], the Convention on the Elimination of All Forms of Discrimination against Women of 1979[9], the Convention on the Rights of the Child of 1989[10], and the Convention on the Rights of Persons with Disabilities of 2006[11].

In the European system, the primary legal instrument which requires to observe the principle of equal treatment is the Convention for the Protection of Human Rights and Fundamental Freedoms[12], which stresses in Article 14 that the rights and freedoms set forth in this Convention shall be secured by States Parties without discrimination on any ground. The principle of equal treatment is also referred to in the European Social Charter of 1961[13], ratified by Poland, the Framework Convention for the Protection of National Minorities of 1995[14] and the Convention on preventing and combating violence against women and domestic violence of 2011[15].

The principle of equality before the law and the special situation of groups exposed to discrimination is also the subject of numerous recommendations made by international organisations. In 2015, the Committee on the Rights of the Child issued concluding remarks to the combined third and fourth periodic report of Poland on the implementation of the

[6] Article 2(1) and Article 3 of the International Covenant on Civil and Political Rights adopted in New York by the United Nations General Assembly on 19 December 1966 (Journal of Laws of 1977 No. 38, item 167) and Article 2(2) and Article 3 of the International Covenant on Economic, Social and Cultural Rights adopted by the United Nations General Assembly on 19 December 1966 (Journal of Laws of 1977 No. 38, item 169).

[7] Article 3 of the Convention on the Status of Refugees concluded in Geneva on 28 July 1951 (Journal of Laws of 1991 No. 119, item 515).

[8] Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination adopted in New York by the United Nations General Assembly on 21 December 1965 (Journal of Laws of 1969 No. 25, item 187).

[9] Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women adopted in New York by the United Nations General Assembly on 18 December 1979 (Journal of Laws of 1982 No. 10, item 71).

[10] Article 2 of the Convention on the Rights of the Child adopted in New York by the United Nations General Assembly on 20 November 1989 (Journal of Laws of 1991 No. 120, item 526, as amended).

[11] Article 5 of the Convention on the Rights of Persons with Disabilities adopted in New York by the United Nations General Assembly on 13 December 2006 (Journal of Laws of 2012, item 1169).

[12] Convention for the Protection of Human Rights and Fundamental Freedoms drawn up in Rome on 4 November 1950 (Journal of Laws of 1993 No. 61, item 284; hereinafter referred to as: the European Convention on Human Rights).

[13] The European Social Charter drawn up in Turin on 18 October 1961 (Journal of Laws of 1999 No. 8, item 67).

[14] Framework Convention for the Protection of National Minorities drawn up in Strasbourg on 1 February 1995 (Journal of Laws of 2002 No. 22, item 209).

[15] Convention on preventing and combating violence against women and domestic violence drawn up in Istanbul on 11 May 2011 (Journal of Laws of 2015, item 961).

Convention on the Rights of the Child[16]. The Committee's recommendations included, among others: a significant strengthening of national anti-discrimination laws to protect the victims of discrimination on any grounds and in all areas, including discrimination on grounds of sex, sexual orientation, disability, religion or age, as well as to take into account the victims of multiple discrimination. The Committee also pointed out the need to supplement the provisions of the Criminal Code regarding criminalisation of hate speech and other crimes resulting from racism, xenophobia and homophobia. In the Committee's assessment, it is also necessary to ensure the protection of the rights of children belonging to religious minorities as regards access to classes in religious education.

Similar recommendations for Poland were published by the European Commission against Racism and Intolerance (ECRI)[17], while stressing the specific situation of non-heterosexual persons and Roma communities, as well as the need to intensify efforts to combat racism at sports events and football matches. The Commission also recommended for Poland to ratify Protocol 12 to the European Convention on Human Rights, which introduces a general prohibition against discrimination. Furthermore, in December 2015, the Commission issued general recommendations for combating hate speech[18], noting the need for effective action against hate speech, among others, in the public space, as well as strengthening civil and administrative measures to protect against this type of behaviour.

It is worth noting that at present the Polish Criminal Code penalizes crimes motivated by prejudices based on features such as: national, ethnic, racial, political, religious origin or solely the lack of religious beliefs[19].

Poland's substantial commitments in the area of equal treatment, however, arise mainly from the law of the European Union. The Charter of Fundamental Rights lays down a general prohibition of discrimination, in particular on grounds of sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation[20]. Specific responsibilities of the Member States are regulated by directives concerning equal treatment in particular areas of social and economic life[21].

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16 Concluding remarks of the Committee on the Rights of the Child to the combined third and fourth periodic report of Poland adopted on the 17th session on 14.09 – 02.10.2015 (CRC/C/POL/CO/3-4).

17 ECRI Report on Poland (fifth monitoring cycle) adopted on 20.03.2015 (CRI(2015)20).

18 ECRI General Policy Recommendation No. 15 on combating hate speech, adopted on 8 December 2015 (CRI(2016)15).

19 Article 119, 256 and 257 of the Act of 6 June 1997 (Journal of Laws no. 88, item 553, as amended).

20 Article 21 et seq. of the Charter of Fundamental Rights.

21 Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood (OJ L 359 of 19.12.1986, p. 56; OJ, Polish Special Edition, Chapter 5, vol. 1, p. 330);Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180 of 19.07.2000, p. 22; OJ, Polish Special Edition, Chapter 20, vol. 1, p. 23); Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303 of 02.12.2000, p. 16; OJ, Polish Special Edition, Chapter 5, vol. 4, p. 79);Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ L

The first changes related to the need to adapt Polish legislation to EU standards on equal treatment took place in the Labour Code[22]. According to the contents of Article 11^2 of the Labour Code, employees have equal rights in respect of the same performance of the same duties; this applies in particular to the equal treatment of men and women in employment. The contents of Article 11^3 of the Labour Code prohibits against any discrimination in employment, direct or indirect, in particular in respect of gender, age, disability, race, religion, nationality, political views, trade union membership, ethnic origin, creed, sexual orientation or in respect of the conditions of employment for a definite or an indefinite period of time or full or part time.

These regulations have been detailed by the provisions of Chapter IIa of the Labour Code, devoted entirely to equal treatment in employment. Article 18^{3a} (1) of the Labour Code clarifies the scope of application of the principle of equal treatment by listing such areas as the establishment and termination of an employment relationship, employment conditions, promotion conditions, as well as access to training in order to improve professional qualifications. Regulations of the Labour Code are supplemented by the Act on Employment Promotion and Labour Market Institutions, which requires the observance of the principle of equal treatment in access to and use of the services of the labour market and of labour market instruments regardless of the conditions listed in it[23].

A key legal regulation, which establishes protective measures for the principle of non-discrimination, on the other hand, is the Act on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment[24]. The Act specifies the areas and ways to counteract infringements of the principle of equal treatment on grounds of sex, race, ethnic origin, nationality, religion, denomination, beliefs, disability, age and sexual orientation. The list of grounds relating to the prohibition of unequal treatment – in contrast to the regulations of the Labour Code, for example, is closed. The material scope of the Act on Equal Treatment includes areas referred to in Articles 4-8 and is determined by the scope of the provisions of implemented directives. It includes fields such as:

1) undertaking vocational training,
2) conditions for taking and conducting business or professional activity,
3) joining and acting in trade unions, employers' organizations and professional self-governing associations,
4) access to and use of labour market instruments and labour market services,

373 of 21.12.2004, p. 37); Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ L 204 of 26.07.2006, p. 23), Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers (OJ L 128 of 30.04.2014, p. 8).

[22] Act of 26 June 1974 (Journal of Laws of 2014, item 1502; hereinafter referred to as: the Labour Code).

[23] Article 2a of the Act of 20 April 2004 on Employment Promotion and Labour Market Institutions (Journal of Laws of 2015, item 149, as amended).

[24] Act of 3 December 2010 (Journal of Laws No. 254, item 1700, as amended; hereinafter also referred to as: the Act on Equal Treatment).

5) access to and conditions for using services, including residential services, objects and procurement of rights and energy, provided they are publicly offered,
6) social security,
7) health care,
8) education and higher education.

The scope of protection granted to individual social groups exposed to discrimination is varied due to the legally protected feature.

Under the Act on equal treatment, the Commissioner for Human Rights performs the tasks of the competent authority in matters of preventing violations of the principle of equal treatment. The basic tasks of the Commissioner include examining motions addressed to him, including complaints about the infringement of the principle of equal treatment and undertaking appropriate activities, in accordance with the Act on the Commissioner for Human Rights[25].

During the period covered by the Report, the Office of the Commissioner for Human Rights received 787 cases relating to the broader issue of equal treatment. In the Commissioner's assessment, however, this number is far disproportionate to the actual scale of discrimination in Poland. It should be kept in mind that people exposed to discrimination and social exclusion are often characterised by a lack of trust to public institutions, low legal consciousness and the lack of knowledge in the field of authorities offering assistance to victims of discrimination. Studies commissioned by the Commissioner[26] show that 85% of persons who have experienced discrimination in the past year, did not report this fact to any public institution. More than 50% of the interviewees claim unanimously that reporting discrimination would not change their personal situation. This may indicate high social acceptance for discriminatory behaviour and low efficiency of legal and practical mechanisms promoting the principle of equal treatment.

For these reasons, the Commissioner was obliged to conduct proactive activities, including analysis, monitoring and support for equal treatment of all persons, carry out independent research on discrimination, as well as develop and issue independent reports and recommendations concerning issues related to discrimination. Having in mind the contents of Article 1 of the Act on Equal Treatment, analytical and research activities of the Commissioner concern the following grounds of discrimination: gender, race, ethnic origin, nationality, religion, denomination, belief, disability, age and sexual orientation.

As part of these duties, in 2015 the Commissioner for Human Rights published three reports in the series *Zasada równego traktowania. Prawo i praktyka* (The Principle of Equal Treatment. Law and Practice.)*:*

– Dostępność lekcji religii wyznań mniejszościowych i lekcji etyki w ramach systemu edukacji szkolnej. Analiza i zalecenia (Accessibility of lessons on minority religions and lessons on ethics within the school education system. Analysis and recommendations),

[25] Act of 15 June 1987 (Journal of Laws of 2014, item 1648, as amended).
[26] Study carried out by TNS Polska „Świadomość prawna w kontekście równego traktowania", December 2015.

– Dostępność edukacji akademickiej dla osób z niepełnosprawnościami. Analiza i Zalecenia (Accessibility of academic education for persons with disabilities. Analysis and recommendations),
– Godzenie ról rodzinnych i zawodowych. Równe traktowanie rodziców na rynku pracy. Analiza i zalecenia (Reconsiliation of work and family life. Equal treatment of parents on the labour market. Analysis and recommendations).

The Commissioner has also commissioned anti-discrimination research concerning access people with disabilities to the justice system, the rules and scope of community-based of care for older persons, as well as equal treatment of transgender persons in the labour market. The results of these surveys will be published in the form of reports in 2016.

Bearing in mind the need to ensure the transparency of the activities of the Commissioner and the correct identification of the most important issues in the implementation of the principle of equal treatment, research topics envisaged in the subsequent years are selected on the basis of an open consultation procedure directed primarily at scientific and research institutions and social organizations that offer help to victims of discrimination. The second edition of the consultation was carried out in February and March 2015. Based on reported topics, subject to expert opinion, the Commissioner has chosen issues to be researched for the 2016-2017 period.

The Commissioner also performs the function of an independent body for the promotion, protection and monitoring of the implementation of the provisions of the Convention on the Rights of Persons with Disabilities[27]. The most important comments made by the Commissioner concerning the state of observance of the freedoms and rights of persons with disabilities were included in the *Sprawozdanie Rzecznika z realizacji przez Polskę zobowiązań wynikających z Konwencji o prawach osób niepełnosprawnych w latach 2012-2014* (Commissioner's Report on Poland's implementation of the obligations arising from the Convention on the Rights of Persons with Disabilities in the years 2012-2014). The report was supplemented by the results of the checks on the implementation of certain provisions of the Convention at the local level, as well as the conclusions of public consultations. The report is available on the Commissioner's website in a version adapted to the needs of the blind and translated into Polish Sign Language.

Having in mind the importance and interdisciplinarity of tasks concerning the implementation of the principle of equal treatment, as well as the protection of the rights of persons with disabilities, the Commissioner – acting in accordance with the Act on the Commissioner for Human Rights – appointed the Deputy Human Rights Commissioner for Equal Treatment[28]. Department of Equal Treatment was formed within the organisational

[27] Convention on the Rights of Persons with Disabilities drawn up in New York on 13 December 2006 (Journal of Laws of 2012, item 1169).

[28] In accordance with Article 20(3) of the Act on the Commissioner for Human Rights, the Commissioner may not appoint more than three Deputy Commissioners. The tasks of the Deputy Commissioner for equal treatment are defined by Order no. 46/2015 of the Commissioner for Human Rights of 19 November 2015 on determining the tasks of the Deputy Commissioner for Human Rights.

structure of the Office[29], which includes the Anti-discrimination Law Unit, as well as the Rights of Migrants and National Minorities Unit. The Department's objective is to ensure the proper implementation of the tasks of the Commissioner as an independent body for equal treatment and an independent body for the promotion, protection and monitoring of the implementation of the Convention on the Rights of Persons with Disabilities.

In addition, social committees of experts continue to work in the Office of the Commissioner, including committees directly dealing with the implementation of the principle of equal treatment, i.e. the Expert Committee on Elderly People, the Expert Committee on People with Disabilities, and the Expert Committee on Migrants. The expert committees aim to support the Commissioner in the achievement of his statutory tasks, in particular with regard to the monitoring of compliance with the principle of equal treatment and the implementation of the provisions of the Convention on the Rights of Persons with Disabilities.

In accordance with the provisions of the Act on the Commissioner for Human Rights, the Commissioner's annual information contains information on compliance with the principle of equal treatment in the Republic of Poland. For the above reasons, the summary of the Commissioner's activities for 2015 was complemented by a review of the case-law of national and international courts, as well as the most important problems noticed in the area of equal treatment by other public authorities responsible for the implementation of the principle of non-discrimination.

[29] Until November 2015 as Department of Equal Treatment and Protection of the Rights of Persons with Disabilities.

I. The activity of the Commissioner for Human Rights in the area of equal treatment and its results – general interventions, selected individual cases and other activities

The following describes the activities of the Commissioner in the field of equal treatment on grounds of racial origin, ethnic origin, nationality, age, gender, sexual orientation, gender identity, religion, denomination or belief. Information on the prevention of discrimination on grounds of disability, in view of the Commissioner's tasks in the field of promotion, protection and monitoring of the implementation of the provisions of the Convention on the Rights of Persons with Disabilities have been included in a separate chapter.

1. Preventing discrimination on grounds of racial, ethnic or national origin

a) Reacting to manifestations of hate speech and crimes motivated by prejudice

In connection with the influx of numerous groups of migrants to Europe, the international community, and in particular the European Union, is facing the challenge of ensuring adequate support for those most in need of help. It is regrettable that media coverage in 2015 was dominated by reports pointing to the negative effects of the engagement of the Polish state and society in solving the current crisis. In the Commissioner's assessment, it is necessary to intensify efforts to counter the growing tide of hate crimes against migrants. Social consent and the absence of a rapid and adequate response on the part of the competent public authorities to event motivated by hatred are conducive to the build-up of hostile attitudes that perpetuate negative stereotypes and prejudices. In this context, the role of the Public Prosecutor's Office is vital to the consistent and effective prosecution of perpetrators of hate crimes. The Commissioner approached the Public Prosecutor General, asking for the evaluation of the effectiveness of the Public Prosecutor's Office in the relevant scope, as well as an indication of the steps planned to respond to the phenomenon of widespread, in particular on the Internet, hate speech.[30] In his response, the Public Prosecutor General assured the Commissioner that the issue of combating hate crimes is one of his priorities[31].

In the last few years, the number of ongoing criminal investigations concerning crimes based prejudices directed towards nationality, ethnicity, race, religion, or the lack thereof, especially using the Internet, has increased significantly – as a result of, among others, greater legal awareness of citizens. In 2014, the team appointed by the Public Prosecutor General developed methodological recommendations for prosecutors concerning cases involving hate crimes committed using the Internet. The General Prosecutor's Office also

[30] XI.518.35.2015 of 25 September 2015.
[31] Letter of 21 October 2015.

prepared lectures and workshops for prosecutors conducting pre-trial proceedings involving crimes motivated by hate and for Police officers engaged in this kind of proceedings. In addition, trainings are planned for approximately 200 prosecutors specialising in issues related to crimes motivated by hatred – developed by the OSCE Office for Democratic Institutions and Human Rights.

In connection with increasing hate speech on the Internet, the Commissioner initiated round table meetings, in order to develop effective remedial action. The work involves both the representatives of public authorities, as well as private institutions[32]. Working groups on social campaign, education and legal matters have been established.

b) Hate speech and discrimination crimes committed in the course of demonstrations organised by opponents of accepting refugees

In the second half of 2015, the Commissioner observed with concern the demonstrations organised in several cities by opponents of accepting refugees to Poland. Behaviour presented during these gatherings, including some statements of their participants, can be rated as exceeding the limits of freedom of speech, and even satisfying the criteria of a prohibited act, in particular, insulting a group within the population due to national or religious affiliation or incitement to hatred on ethnic or religious differences. Each time, the Commissioner drew attention to the need for rapid and adequate response by the law enforcement, which is required to ensure the safety of all persons resident in the territory of our country, including the appropriate response to discriminatory offences.

The Commissioner approached the Commander-in-Chief of the Police asking for information[33] about: whether events that meet the criteria of a prohibited act were noted while police officers were carrying out their duties, the number of initiated proceedings, as well as an indication of whether any activities are undertaken to ensure the expected efficacy on the part of this service for the protection of persons already present on the territory of Poland and those whose arrival is planned.

In his response[34], the Commander-in-Chief of the Police assured that each anti-immigration demonstration is subjected to a thorough risk analysis, which allows to pinpoint risk areas, including those related to hate crimes. He presented data from Voivodship Headquarters of the Police concerning public gatherings organised in individual voivodships and identified events that satisfy the conditions of prohibited acts. He also handed over information about activities carried out by the Police, aimed at ensuring the safety

[32] The meeting was held in the Office of the Commissioner for Human Rights on 13 November 2015, with the participation of the Public Prosecutor General, representatives of the Police, the Ministry of Justice, the Ministry of the Interior and Administration, the Ministry of Digital Affairs, and the representatives of web portals, social media and non-governmental organizations. The next meeting is scheduled for January 25, 2016.

[33] XI.518.34.2015 of 8 October 2015.

[34] Letter of 2 November 2015.

of migrants. He also highlighted the role played by the Plenipotentiary for Human Rights of the Commander-in-Chief of the Police and similar plenipotentiaries of each voivodeship/municipal commander of the Police in the process of internal education within the Police force.

c) Hateful inscriptions in public space

In accordance with the provisions of the Construction Act[35] , the owner or administrator of a structure is required to maintain and use the structure in accordance with the rules laid down in this law, and hence in appropriate technical and aesthetic condition. If it is determined that a structure defaces the environment due to its appearance, the construction supervision authority instructs the owner or administrator of the structure by way of decision to remove the identified irregularities. In the opinion of the Commissioner, placing hateful inscriptions on a structures can be interpreted as an improper aesthetic state and lead to such disfigurement of the environment, which constitutes the basis for an intervention of the relevant authority. The analysis of how construction supervision authorities undertake activities points to discrepancies in the interpretation of provisions governing the maintenance of structures.

Therefore, the Commissioner approached the General Construction Supervision Inspector to provide information[36] on actions undertaken in order to harmonise the implementation of the provisions of the Construction Act by the supervisory authorities. He also indicated that such orders should be issued as a last resort, because usually the owners or administrators alone are the victims of this type of third party activities, and repeatedly hateful inscriptions are removed from the public space thanks to the commitment and work of non-governmental organizations[37].

In his response, the General Construction Supervision Inspector reported[38] that he is undertaking a series of measures aimed at ensuring the uniform interpretation of regulations by architectural and construction authorities and construction supervision. However, the assessment of whether a structure's appearance is defacing its surroundings is up to the local authority conducting the specific proceedings. In case a hateful inscription is identified on a structure, construction supervision should inform the law enforcement authorities. The General Construction Supervision Inspector also pointed out that over the course of the Construction Law Codification Committee's work it was found that construction supervision authorities should be exempted from the obligations relating to the assessment of the structure's aesthetics, among others, due to the fact that this case is a very

35 Act of 7 July 1994 (Journal of Laws of 2013, item 1409, as amended).
36 VIII.816.3.2015 of 16 October 2015.
37 See for example, the HejtSTOP campaign, also joined by the Commissioner for Human Rights.
38 Letter of 5 November 2015.

subjective matter that refers to tastes and feelings of the evaluator, and it was proposed to repeal Article 66(1)(4) of the Construction Act.

The Commissioner's further action in this matter will depend on the progress and effects of the activities taken against administrators or owners of individual structures and the results of undertaken legislative work.

d) Protection of the rights of the Roma minority – social and existential conditions of the Roma community

The situation of the Roma community has been an area of particular interest to the Commissioner for many years. In 2015, the staff of the Office of the Commissioner for Human Rights again visited the Roma settlements in the Lesser Poland Province. Living conditions in these settlements are still very bad. The works of the municipal authorities, partly financed using funds from the "Integration Programme of the Roma Community in Poland for the Years 2014-2020", are mostly on an ad-hoc basis.

As can be seen from the visits, according to the local and regional authorities, the correct – and often the only one proposed – solution to the housing problems of the Roma community is to purchase apartments or houses outside the settlements, often in other municipalities. This situation, due to the absence of the Roma's consent to change residence, leads to a deadlock. Meanwhile, it is only the will of the local authorities that is needed to request the mobilisation of funds from the Programme, as well as to assess the needs and expectations of the Roma community.

Concerning the implementation of the Programme, the Commissioner approached the Lesser Poland Voivode's Plenipotentiary for National and Ethnic Minorities with a request to indicate[39], which municipalities from the Lesser Poland Province submitted – within the appropriate time limit – the application for funding from the Programme in 2015, and which measures or investments did they concern.

The Commissioner also approached the Mayor of Limanowa for information about the investment plans[40]. One of the visited Roma settlements is located in this commune. The Commissioner also pointed to the fact that most of the problems of the residents of the estate still remains unsolved. The standard of residential buildings, which were considered unlawful building work, is rapidly deteriorating. The problem of refuse disposal and the related concerns of the estate's residents that most of the buildings will be left out of the future sewage system plans remains relevant. The lack of a possibility to deliver children to school in Limanowa using communal means of transport is also a significant problem to the Roma minority. Providing children with transportation to school would positively affect attendance among students.

[39] XI.816.4.2015 of 14 December 2015.
[40] XI.816.4.2015 of 14 December 2015.

In his response, the Mayor of Limanowa informed[41] about the submission of an application to the Lesser Poland Provincial Office in Cracow on 13 November 2015 for funding within the framework of the Programme for the implementation of several tasks, including those aimed at improving housing conditions and the construction of a sewage system. On the issue of transportation for Roma students to the school in Limanowa, in the Mayor's assessment it is difficult to justify low attendance among students from the Roma settlement only by the lack of communal transportation, as the distance between the school and the Roma estate is only 1.5 kilometre.

The Commissioner also received complaints about a project carried out by Limanowa's authorities, whose aim was to improve the conditions in which several Roma families from this city live. This project has received funding from the Programme. With this funding, the city authorities have purchased a new house for the Roma. Not in Limanowa, however, but in Czchów, which is located in another commune (the Czchów commune) and another district (Brzeski District). The applicants, among whom there are also the Roma, claim that during the purchase the authorities did not take into account the opinions of the Roma themselves, who do not want to leave their current place of residence and hometown. The aim of the local authorities, in the opinion of the applicants, was only the deportation of the Roma outside city limits, and the improvement of residential conditions was only a pretext.

The Commissioner asked the Lesser Poland Voivode's Plenipotentiary for National and Ethnic Minorities for clarifications.[42] Information collected from various sources differ, however, in an important aspect concerning whether the local authorities have consulted their project earlier with the people who were its beneficiaries, and whether these persons have actually agreed to invest the funds from the Roma Programme in the purchase of a house outside of Limanowa.

The case of social and existential conditions of the Roma community remains a work in progress. The Commissioner's view is that the solution to the problem of improving housing conditions, in which a part of the Roma community lives, may be the purchase – using funds from the Roma Programme – of new houses or apartments, unless it indeed increases the standards of residence and is done in consultation and with the consent of the interested parties themselves.

A Commissioner calls for the creation of a comprehensive program, independent of the currently implemented Programme, whose aim would only include planning and financing the process of improving the living conditions of Roma settlements throughout Poland[43]. One should also introduce solutions that would encourage local and regional authorities to engage in activities to improve the living conditions of the local Roma communities. The Commissioner approached the Minister of the Interior and Administration with a request for the presentation of a position on the matter and asked to undertake action, which will immediately increase the activity of local authorities in the use of opportunities created

41 Letter of 22 December 2015.
42 XI.816.13.2015 of 17 November 2015.
43 XI.816.4.2015 of 18 December 2015.

by the Integration Programme of the Roma Community in Poland as regards residential conditions.

e) The practice of sending Roma children to special schools only due to the lack of sufficient knowledge of the Polish language

In the comments to the combined III and IV periodic report of Poland on the implementation of the Convention on the Rights of the Child[44] , the UN Committee on the Rights of the Child raised the problem of over-representation of Roma children in special schools. In the evaluation of the Committee, many of the children are placed in such schools incorrectly, only due to poor knowledge of Polish language and checking knowledge in a way that does not take into account cultural factors. After familiarising himself with the Comments of the Committee, the Commissioner approached the Ministry of National Education asking for a summary of all current data available to the Ministry on the number of Roma children admitted to special schools and studying in them.[45]

In response, the Ministry of National Education presented to the Commissioner data on the number of decisions on the need for special education[46], issued in the years 2012-2014 in individual provinces. The Commissioner has also received information about a project prepared by the Ministry concerning the development of new instruments for a psychological and pedagogical diagnosis and the creation of new standards of such diagnosis for students with special educational needs.

Currently, the Commissioner is monitoring the case, and his further actions depend on the progress and results of the work undertaken by the Ministry of National Education.

f) The access of underage foreign citizens to education in Poland

In 2013, the Commissioner conducted research on the access of underage foreign citizens to education. The Commissioner focused on two groups of foreigners, who found themselves in particular circumstances. The first group was composed of applicants for international protection in Poland and for this reason – benefiting from social welfare offered in open centres for foreigners. The second group were children, who were sent – with or without their families (if there were unaccompanied in Poland) – to guarded centres for foreigners, where they awaited a decision on the return to their country of origin. The staff of the Office of the Commissioner who conducted the research visited several primary and

[44] Concluding remarks to the combined third and fourth periodic report of Poland can be found at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/POL/CO/3-4&Lang=En.

[45] XI.816.6.2015 of 12 November 2015.

[46] Letter of 26 November 2015.

secondary schools, selected centres for foreigners applying for refugee status, in which foreigners seeking this status receive social assistance, as well as guarded centres where underage foreigners may also be found. The results are described in the report "*Implementation of the right of underage foreign citizens to education*[47]" sent, along with the Commissioner's motions, to the Minister of National Education, the Minister of the Interior, the Head of the Office for Foreigners and the Commander-in-Chief of the Border Guard[48].

The Commissioner's activities have produced some results. Still during the research phase, the Border Guard has selected two guarded centres – in Kętrzyn and Biała Podlaska – where foreign school-age minors may be admitted. Classrooms were prepared and properly equipped, and the classes are conducted by teachers from public schools. In response to the Commissioner's motion, on 23 April 2015, the Ministry of National Education organised a meeting between the representatives of the Headquarters of the Border Guard, border guards serving in the guarded centres in Biała Podlaska and Kętrzyn, as well as the headmasters of primary schools and school superintendents from the Mazovia Province and Warmia-Masuria Province, with the participation of an employee from the Office of the Commissioner.[49] Further to the recommendations indicated in the Commissioner's report, the Ministry of National Education declared to create of a legal framework for teaching detained underage foreigners.

The issue of changes to the education system that aim to improve the situation of a student-foreigner and at the same time, to facilitate the implementation of tasks carried out by schools, has become urgent in connection with the ongoing migration crisis in Europe and the Polish commitment to the EU relocation and resettlement programme of foreigners wishing to apply for international protection in the Member States. The Commissioner addressed this issue in his motion to the Prime Minister concerning the "road map" for accepting refugees by Poland[50]. Among the suggested solutions, which should help to increase the efficiency of teaching and provide foreigners with the effective implementation of the right to education, enshrined in Article 70(1) of the Constitution of the Republic of Poland, was the unification of the curriculum implemented in relation to foreigners, setting the minimum requirements this group of students should be subject to, the creation of uniform assessment standards and promotion of students to further classes, as well as a change in the admission of foreigners to the external exams.

The Commissioner also pointed out that a successful implementation of the tasks incumbent upon schools requires teachers and educators to possess special knowledge and intercultural competences. They can be achieved through training or workshops addressed to people working with foreign children and through equipping schools with appropriate

[47] *Realizacja prawa małoletnich cudzoziemców do edukacji*, Zasada Równego Traktowania. Prawo i praktyka, no. 12, Biuro Rzecznika Praw Obywatelskich 2013.

[48] V.540.11.2014 of 16 June (to the Ministry of National Education) and 16 July 2014 (to the Ministry of the Interior, Commander-in-Chief of the Border Guard and the Head of the Office for Foreigners).

[49] V.540.11.2014 of 9 February 2015.

[50] V.543.9.2015 of 6 October 2015.

educational materials. It is also necessary to involve Polish students in all activities serving to adapt foreign students to the new conditions. The responsibility of the teachers should now be to spread sound knowledge of the phenomenon of migration and refuge among Polish students, the countries and cultures which the migrants come from, as well as to sensitize young people to the issue of cultural differences, respect for these differences and intercultural dialogue.

At the same time, the Commissioner also pointed out a material breach of the right to education, resulting from Article 70 of the Constitution in the case of underage foreigners placed in guarded centres. This group of minors is completely excluded from the general education system. Teaching children in guarded centres has not been regulated in any educational law, it takes place only on the basis of an agreement between the border guard, public schools and education authorities, and therefore it depends only on the will and the ability of these institutions, and does not implement any curriculum. In this situation, the Commissioner found, in the first place, the creation of legal regulations, which specify the principles on which this group of minors will realize their right to education to be necessary. The main demand of the Commissioner was to allow children from guarded centres to learn in public schools, on the basis of rules applying to all other foreigners who exercise their right to education in Poland.

The case remains within the interests of the Commissioner.

g) Legal situation of migrants from EU countries

The Commissioner approached Minister of the Interior and Administration concerning foreigners who are EU-nationals, who – in the legislative situation in force – may not fully benefit from the EU's freedom of movement[51]. The citizens of the European Union can, in principle, enter and stay on the territory of Poland for a period of no longer than three months without any formalities. These foreigners acquire the right of residence for a longer period only if they meet one of the conditions specified in the Act on the Entry into, Residence in and Exit from the Republic of Poland of Nationals of the European Union Member States and their Family Members[52]. Most of these conditions are associated with employment or work on their own account, or with having financial resources and health insurance. This excludes the possibility of acquiring the right of residence by a person in a precarious financial situation and who – for a variety of reasons – are not able to take up work. Foreigners who do not have the right of residence, may not benefit from social assistance benefits. As an example, the Commissioner pointed out the case of Romanian Roma who are still living in extreme poverty within camps located, among others, in Wrocław and Poznań.

[51] V.540.1.2014 of 3 November 2015.

[52] Act of 14 July 2006 (Journal of Laws of 2014, item 1525, as amended).

In response, the Minister of the Interior and Administration announced an amendment of the provisions, which – starting from 2016 – should facilitate the registration of residence on Polish territory of Romanian Citizens, of Roma origin, who would participate in integration programmes co-financed by the European Union[53]. The Commissioner will continue his efforts to change the law in this respect. At the same time, the employees of the Office of the Commissioner monitor the situation of the Roma camp in Wrocław on a regular basis. In November 2015, the Commissioner met with the representatives of the Nomada Association, who every day work with a group of Romanian Roma in Wrocław. During the meeting, the key issues of this community were discussed, and a possible solution to the conflict between the Roma communities and local authorities was indicated.

h) Access to university education for foreigners married to Polish citizens and who possess a residence permit

In accordance with the Act on Higher Education[54], foreigners may take up studies, doctoral studies and other forms of education, as well as participate in scientific research and development in accordance with provisions set out in the Act. The Act on Higher Education specifies the list of foreigners entitled to take up studies pursuant to the same rules as Polish citizens. The category of eligible persons does not include foreigners who are nationals of a third country which is not a Member State of the European Union nor party to the agreement on the European Economic Area, holding a temporary residence permit as a person remaining married to a Polish citizen in a marriage recognised by Polish law. Consequently, Polish citizens' spouses who are foreigners are unequally treated in comparison to the spouses of non-Polish nationals, while the latter group may benefit from wider rights in terms of taking up and pursuing higher studies. Such treatment also applies indirectly to Polish citizens who form a family, as the existing restrictions affect access to education and, consequently, negatively impact the situation of their spouses in the labour market.

In view of the above, the Commissioner approached the Minister of Science and Higher Education[55]. In their response, the Minister of Science and Higher Education reported[56] that the Ministry shall review all laws relating to undertaking and pursuing of higher studies by foreigners. The regulation on undertaking and pursuing higher studies and trainings, as well as their participation in scientific research and development programmes has already been amended. The subsequent works are in progress, however, the proposed regulations must take into account the budgetary capabilities.

The case remains pending.

53 Letter of 7 December 2015.
54 Act of 27 July 2005 (Journal of Laws of 2012, item 572, as amended).
55 VIII.7030.1.2014 of 9 March 2015.
56 Letter of 21 October 2015.

2. Combating discrimination on grounds of religion, denomination or belief

a) Availability of ethics and religion classes to religious minorities

The issue of the availability of minority religions still lies in the interests of the Commissioner, who touched upon them, among others, in the report from the study entitled *Dostępność lekcji religii wyznań mniejszościowych i lekcji etyki w ramach systemu edukacji szkolnej. Analiza i zalecenia*[57] *(Accessibility of lessons on minority religions and lessons on ethics within school education system. Analysis and recommendations).* The results of the study indicate that the adopted legal arrangements[58], though having contributed to the improvement of the situation, do not protect individual religious and social groups to a sufficient degree, and access to religion education classes of minority faiths and ethics is not always guaranteed. In the course of the study, it was found that there are cases of not including grades for religious education of minority faiths on school reports of children belonging to churches or religious societies, which conduct religious education both within and outside the education system. Meanwhile, it is worth noting that the law allows to include grades in religion lessons conducted in religious education facilities on school reports. The grade for religious education (or lack thereof) affects the average grade, which results in an unequal situation of these children in the education system. In addition, there are cases of students and parents obliged to submit a declaration of refusal to participate in the religion classes, even in the presence of other parents and students, though being forced to disclose their faith or beliefs is a violation of the freedom of thought, conscience and religion guaranteed by the Constitution and the European Convention on Human Rights.

Despite the amendments to the regulations, the results of the survey also revealed cases of refusal to organise ethics classes due to a small number of volunteers, although it is the responsibility of the school or leading authority to organize classes in ethics or minority religion even on request of only one student. People seeking to organise lessons were met with disdain towards their requests to organise classes in ethics or minority religions, ignoring their notifications or exerting pressure the child's participation in religious education with the rest of the class. There were also indications made by the respondents that testified to the negation of the right of a given religious organisation or church to organise classes in minority religions by school principals and representatives of leading bodies.

[57] *Dostępność lekcji religii wyznań mniejszościowych i lekcji etyki w ramach systemu edukacji szkolnej. Analiza i zalecenia,* Zasada Równego Traktowania. Prawo i praktyka, no. 17, Biuro Rzecznika Praw Obywatelskich, Warsaw 2015.

[58] Ordinance of 14 April 1992 on the conditions and method of teaching religious education in public pre-schools and schools (Journal of Laws of 1992 No. 36, item 155, as amended).

In the Commissioner's assessment, the examples described above constitute unlawful direct discrimination on grounds of religion and belief in the area of education. In order to prevent similar occurrences, in his report the Commissioner presented conclusions and recommendations for various public authorities. Among them, ones addressed to the Ministry of National Education and school principals should be noted.

The preparation of an amendment to the regulation on the conditions and methods of teaching religious education in public pre-schools and schools so as to impose the requirement to inform parents and students about the possibilities and methods of organising lessons in ethics and minority religions on school principals remains the responsibility of the Ministry of National Education, as well as so the need for organising classes in minority religions can be reported by the representatives of churches and religious societies, and not just by the parents and students. Another recommendation is the adjustment of collected statistics in a way that enables the monitoring of the number of students attending lessons of minority religions and ethics lessons. The lack of such information makes it difficult to estimate the need for such activities and the demand for jobs for teachers of lesson in minority religions and ethics lessons. The Commissioner also stressed the importance of carrying out a constant information and educational campaign on the principles of organising classes in ethics and minority religion lessons. Access to lessons should be met with particular care in areas where religious minorities are relatively few and far between.

In the recommendations set forth, the Commissioner also noted that it is the school principals' duty to implement good practices of informing students and parents about the possibility of organising minority religion lessons and lesson in ethics, for example – using appropriate forms. In addition, the Commissioner underlines the need to further increase the involvement of principals in the organising these lessons, as well as in paying attention to include grades in minority religions on students' school reports. The Commissioner continues to monitor the teaching of ethics and religions of religious minorities within the education system.

b) Food and catering taking into account religious, cultural and world-view requirements in prisons and detention centres

The Commissioner for Human Rights continued his activities related to the right of prisoners to food that respects religious, cultural and world-view requirements. The Commissioner received complaints from people in prisons and detention centres indicating that, after transporting to another penal institution, these persons do not receive food according to the diet determined in the previous unit. These complaints come from people on religious, vegetarian or any other individual diet. Reverting to the previous diet takes place only after the prisoner's request and the subsequent acceptance of the unit's director.

Usually, several days pass until the prisoner receives food corresponding to the principles professed by their religion or world-view.

The Commissioner approached the Director-General of the Prison Service[59] , indicating that penal institutions, which receive transports, obtain information about the transported persons at least twenty-four hours in advance, including the current standard of food and diet. With this information, the institution may freely prepare suitable meals for the prisoner, already from the beginning of his stay. The provisions of the Executive Penal Code[60] stipulating that, as reasonably possible, the prisoner shall receive food with regard to the religious and cultural requirements, in fact, obligate the prison administration to do their utmost to provide the prisoner with such food. The need to ensure that the prisoner is provided with food that respects their religion, culture or world view is also indicated by the judgements of the European Court of Human Rights.

The Director-General of the Prison Service announced[61] that works have been taken on the standardisation of rules on how to proceed on the issue of providing prisoners' with food compatible with the nutritional standard set out in the previous penal institution. The draft ordinance of the Minister of Justice on meals for persons detained in prisons and detention centres takes into account the Commissioner's recommendations.

3. Combating discrimination on grounds of sex

a) Combating violence against women

In the area of the protection of women's rights the problem of large scale domestic violence and gender-based violence remains unresolved. The Commissioner, in his motion to the Minister of Family, Labour and Social Policy[62], drew attention to the issue of adapting Polish legislation concerning the isolation of the perpetrator of violence from the victim to the requirements of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (The Istanbul Convention). In accordance with the provisions of this Convention, the Member States shall adopt measures necessary to enable the competent authorities to require perpetrators of domestic violence, in situations of imminent danger, to leave the place of residence of the victim or person at risk, for an appropriate period and prohibit the perpetrator from entering the premises occupied by the victim or person at risk or contacting them. The existing legislation provides for a number of measures that enable the isolation of the perpetrator of domestic violence

[59] II.517.6143.2014 of 13 January 2015.
[60] Act of 6 June 1997 (Journal of Laws No. 90, item 557, as amended).
[61] Letter of 26 January 2015 and letter of 7 April 2015.
[62] XI.518.47.2015 of 10 December 2015.

from the victim, however, they are not sufficient and require appropriate supplementation. The Commissioner asked whether the Monitoring Team on the Prevention of Domestic Violence is currently preparing any proposals for amendments of provisions that allow the competent authorities to require perpetrators of domestic violence to leave the place of residence of the victim while taking account of the standards for the protection of human rights resulting from the Istanbul Convention.

In her response, the Undersecretary of State in the Ministry of Family, Labour and Social Policy[63] identified the legislative changes currently being considered, including an introduction of solutions for fast and effective isolation of the perpetrators of violence even before the start of criminal proceedings to the Act on the Police[64] .

The Commissioner also referred a motion[65] to the Minister of Family, Labour and Social Policy on the adoption of a domestic violence prevention programme by the city of Zakopane. It is apparent from the information available[66] that it is the only municipality in Poland, which – so far – has neither adopted the programme, nor established an interdisciplinary team, although these tasks of the commune are mandatory[67], and failure to implement them violates not only the act, but also the provisions of the Constitution and the European Convention on Human Rights.

The Undersecretary of State in the Ministry of Family, Labour and Social policy informed[68] about referring a reminder letter to the Mayor of Zakopane. The Ministry also requested the Governor of Lesser Poland Province to intervene in this issue as part of the exercised supervision and control over local self-government units. The Ministry shall inform the Commissioner about the final decisions after receiving answers to the letters mentioned above. The issue of preventing gender-based violence will remain the subject of further activities of the Commissioner.

b) Helpline for women-victims of domestic violence

Already in 2013, the Commissioner recommended[69] the provision of a nationwide, 24-hour, free helpline for women – victims of domestic violence, in order to provide advice and to enable the notification of appropriate emergency services about sudden, life- or

63 Letter of 5 January 2016.

64 Act of 6 April 1990 (Journal of Laws of 2015, item 355, as amended).

65 XI.816.1.2015 of 4 December 2015.

66 See. *Sprawozdanie z realizacji Krajowego Programu Przeciwdziałania Przemocy w Rodzinie od 1 stycznia 2013 r. do 31 grudnia 2013 r.* http://www.mpips.gov.pl/przeciwdzialanie-przemocy-w-rodzinie-nowa/ogolne/sprawozdania-z-realizacji-krajowego-programu-przeciwdzialania-przemocy-w-rodzinie/sprawozdanie-z-krajowego-programu-przeciwdzialania-przemocy-w-rodzinie-za-2013-r/ (as of 19.01.2016).

67 Act of 29 July 2005 (Journal of Laws of 2015, item 1390, as amended).

68 Letter of 28 December 2015.

69 *Przeciwdziałanie przemocy wobec kobiet, w tym kobiet starszych i kobiet z niepełnosprawnościami. Analiza i zalecenia,* Zasada Równego Traktowania. Prawo i praktyka, no, 9, Biuro Rzecznika Praw Obywatelskich, Warsaw 2013, p. 99.

health-threatening situations. As is apparent from the information provided by the Ministry of Labour and Social Policy[70], the creation of a 24-hour, free, nationwide telephone line for victims of domestic and gender-based violence is provided for in the "National Programme for the Prevention of Domestic Violence for the 2014-2020 Period", however, it will be financed from 2017[71]. The Commissioner called the Prime Minister to accelerate the launch of such a hotline, especially given that the solutions currently available in this area are inadequate[72]. The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence requires Poland to establish a nationwide, 24-hour, free helpline providing advice while preserving confidentiality or anonymity of callers.

The Undersecretary of State at the Ministry of Health informed[73] that, according to the resolution on the establishment of the "National Programme for the Prevention of Domestic Violence for the 2014-2020 Period", the creation of a 24-hour, free, nationwide telephone line for victims of domestic and gender-based violence was commissioned to the Minister competent for Health Affairs with the support of the State Agency for the Prevention of Alcohol-Related Problems (PARPA). PARPA has guaranteed about its readiness to maintain a 24-hour phone line for women-victims of violence from 2016. However, the Ministry of Labour and Social Policy – despite the fact that it sees the legitimacy and necessity of a national, 24-hour helpline for people affected by domestic and gender-based violence – did not provide any extra financial resources for this purpose[74].

Following-up on the case, the Commissioner once more pointed to the need to undertake action aimed at increasing the protection of people experiencing – or at risk of – domestic violence, by launching a nationwide, 24-hour, free hotline for victims of all forms of violence, while preserving the confidentiality or anonymity of callers as soon as possible and the transfer of appropriate funds for this purpose in 2016[75]. The Government, however, maintained its position[76].

c) Restrictions on access to payments from the alimony fund

Maintenance evasion should be considered a form of economic violence that primarily affects women. This phenomenon calls for comprehensive action on the part of the State, in connection with low efficiency of the currently available methods of execution of these payments.

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70 Letter of 8 September 2014.
71 Resolution no. 76 of the Council of Ministers of 29 April 2014 (Monitor Polski of 9 June 2014, item 445).
72 XI.816.1.2015 of 21 July 2015 and XI.816.1.2015 of 19 October 2015.
73 Letter of 9 September 2015.
74 Letter of 5 November 2015.
75 XI.816.1.2015 of 10 December 2015.
76 Letter of 7 December 2015.

Over the 7 years since the Act of Assistance to the Persons Entitled to Alimony[77] came into force, the amount of payments from the maintenance fund and the amount of the income criterion remain unchanged. With the decline in the real value of money, the increase in costs of living, and above all with the increase of the amount of the minimum remuneration for work, this omission involves a serious and very palpable consequences. It leads to a reduction in the real value of aid granted by the State, as well as to the exclusion of large groups of children from the support system. Single parents bringing up children affected by non-alimony are mostly women, therefore, non-payment of child support and the ineffectiveness of State authorities in their enforcement may constitute a manifestation of discrimination and unequal treatment.

In view of the above, the Commissioner approached the Prime Minister to take action in order to protect the rights of parents and children experiencing non-alimony, including the abolition of the income criterion, or its increase[78]. In response to this motion, the Ministry of Social Policy informed the Commissioner[79] that, in view of the fact that payments from the maintenance fund are paid from the State budget, it is currently not possible to direct this form of assistance to all persons entitled to child support, who do not receive it due to the ineffectiveness of enforcement. Currently, there are no ongoing works on increasing or abolishing the income criterion, as well as on amendments relating to increasing the maximum amount of those payments. At the same time, it was reported that the possibilities for interministerial action are being analysed, aiming to develop new solutions for combating the problem of non-alimony, including an improvement of the efficiency of enforcing alimony.

The Commissioner also approached[80] the Director-General of the Prison Service in order to obtain statistical data on persons convicted of non-alimony, who are serving their sentences in penal institutions. In his response, the Director-General of the Prison Service[81] pointed out that as of 31 December 2015 there were 3,676 people convicted of the offence referred to in Article 209 of the Criminal Code staying in penal institutions, and final judgements have been entered for execution in relation to 1,638 prisoners, in the case of which punishments pursuant to Article 209 of the Criminal Code have been imposed, and these punishments will be executed next. The relation of persons employed to persons obliged to pay child support and staying in penal institutions – amounted to: 25% in 2013, 27% in 2014, 29% in 2015. As outlined in the response, currently the team established in consultation with the Ministry of Justice and tasked with creating organisational and legal solutions is hard at work in order to develop the employment of persons deprived of their liberty, including those obliged to pay maintenance.

77 Act of 7 September 2007 (Journal of Laws of 2015, item 859, as amended).
78 III.7064.175.2015 of 1 December 2015.
79 Letter of 13 January 2016.
80 IX.517.47.2016 of 5 January 2016.
81 Letter of 18 January 2016.

The problem of non-payment of the alimony is complex in nature, therefore, the Commissioner decided to create, in cooperation with the Ombudsman for Children Rights, the Alimony Experts Team. The team will work in 2016 in order to find possible solutions to improve the effectiveness of enforcing maintenance claims.

d) Availability of anaesthesia during childbirth

The Commissioner approached the National Health Fund (*Narodowy Fundusz Zdrowia*)[82] for an explanation concerning the difference in patients' access to pharmacological anaesthesia during childbirth, depending on where they live. Press reports indicate that 75 percent of all anaesthesia during childbirth took place in the largest Polish cities, including Warsaw, Krakow and Katowice. Such a significant disparity in access to health services financed entirely by the National Health Fund has raised the Commissioner's doubts about whether women giving birth have, in fact, equal access to this service, regardless of the place of residence.

In its response, the National Health Fund pointed out[83] that it has commissioned its Regional Branches to carry out audits to ensure the availability of intrapartum analgesia with healthcare providers who, despite the obligation, do not offer this service. In addition, it was explained that, indeed, the first analysis of two months of providing healthcare services carried out by the Head Office of the Fund shows that most epidural anaesthesia have been provided in the Malopolska, Mazovia and Silesia Provinces, which are the provinces with the largest number of childbirths in the entire country.

In view of the above, the Commissioner approached all Regional Branches of the National Health Fund[84] to request information on the number of natural deliveries and the number epidural anaesthesia made during deliveries in 2015. The case remains pending.

e) Reproductive rights of women and the conscience clause

In its judgement of 7 October 2015, the Constitutional Tribunal declared the unconstitutionality of the first sentence of Article 39 of the Act on the professions of doctor and dentist[85]. From the date of entry into force of the Constitutional Tribunal's decision, i.e. October 16, 2015, the Polish legal system lacks a clearly defined entity obliged to indicate real possibilities of obtaining a medical service from another doctor or other healthcare institution to a patient who was denied this service by a physician invoking the conscience clause. The lack of this mechanism poses a real threat to the possibility of obtaining medical

82 V.7010.112.2015 of 15 October 2015.
83 Letter of 2 November 2015.
84 V.7010.112.2015 of 1 December 2015.
85 Case K 12/14.

treatment by patients. In his motion to the Minister of Health[86], the Commissioner highlighted the need for urgent action aiming to establish mechanisms that in such situations will allow patients to receive information about where they can actually obtain medical treatment.

The Minister of Health pointed out[87] that, in spite of the Tribunal's "negative interference", the provision may still be applied – in the scope applicable after 16 October 2015 – and therefore the operative part of the judgement does not indicate that the executive or the legislature have to undertake any other actions.

The Commissioner will monitor the issue of the practical application of the so-called conscience clause, also in the exercise of reproductive rights of women.

f) The availability of the in vitro procedure

The Commissioner approached the Minister of Health with a request to explain the reasons[88] why the Ministry intends to stop funding in vitro fertilization (financed under the health policy programme implemented from 2013) and to indicate arguments supporting methods of treating infertility other than IVF. Discontinuation of public funding for in vitro fertilization procedures will cause many people, who currently are subjected to the treatment, to not take full advantage of the possibilities envisaged by the ministerial programme, and will constitute a return to the situation in which the availability of in vitro procedures will be limited only to a narrow circle of wealthy individuals.

In his response, the Minister of Health informed[89] that the health policy programme for infertility treatment through in vitro fertilization was intended for implementation between 1 July 2013 and 30 June 2016. The program will end, according to the adopted assumptions, within the prescribed period. However, the Minister of Health decided to cancel the next edition of the programme for the 2016-2019 period. Statutory provisions do not oblige the Minister to continue a previously implemented and completed programme. The response also stated that the method of in vitro fertilization is only one of the numerous methods of treating infertility. In the assessment of the Minister of Health, the procedure of medically assisted procreation is generally treated as a final, and thus marginal, method. Currently, the Ministry of Health is intensively working on undertaking information activities on the protection and promotion of reproductive health.

The Commissioner, in his response to the letter from the Minister of Health, pointed out that the primary function of the Council of Ministers – as the executive authority – is to ensure the implementation of statutes to the extent and in accordance with the principles specified by the Constitution and statutes. In practice, discontinuation of public funding

[86] Letter of 12 October 2015, resent on 14 December 2014, VII.812.5.2014.
[87] Letter of 7 January 2016.
[88] VII.5002.6.2015 of 14 December 2015.
[89] Letter of 30 December 2015.

for in vitro fertilization procedures will deprive the Act on Infertility Treatment of any useful effect[90]. Therefore, such a decision will remain at odds with the above-mentioned basic task of the Council of Ministers, and will also result in an unjustified restriction of access to the in vitro method, which is regulated by law.

The Commissioner also noted that, in accordance with the provisions of the Act on Infertility Treatment, the information on the declaration necessary for acknowledgement of paternity will be entered into the civil registry records before transferring reproductive cells to the woman's body. Due to the fact that large numbers of employees of civil registry offices and the Ministry of the Interior have access to civil registry records, which may allow unauthorized persons to obtain information about the origin of the child, the Commissioner approached the Minister of the Interior with a request for information about the manner of securing data included in the centralized civil status register[91]. In his response, the Undersecretary of State in the Ministry of the Interior pointed out[92] that data on the use of the in vitro procedure, including the acknowledgement of paternity, will not be entered directly on the birth certificate. However, they will be located in the so called *"acknowledgement register"* and *"acknowledgement protocol" (rejestr uznań* and *protokół uznań*, respectively). This document will be attached to the aggregate records of the birth certificate and shall be made available only at the request of the person concerned – upon reaching adulthood, or at the request of the court.

The Commissioner also filed an application to the Constitutional Court on the lack of appropriate transitional provisions in the Act on Infertility Treatment. Their absence means that women that are unmarried or in cohabitation with a man, who have deposited in a clinic embryos created from their reproductive cells and the cell of an anonymous donor before the entry into force of the Act on Infertility Treatment, will not be able to use them, unless their partners declare readiness for fatherhood. According to the Commissioner, such a situation violates the principle of citizens' trust in the state and its laws and the principle of protection of acquired rights which results from the Constitution. The provision providing that the embryo will be sent for the so-called donation 20 years after the entry into force of the Act or the death of the embryo's donors also raises the Commissioner's doubts. As a result, a woman who has undergone the initial procedure, and – on the basis of a civil contract – the clinic took her reproductive cell and created an embryo from this cells and the cell of an anonymous donor, is placed in a situation in which the failure to utilize the cell for a period of 20 years leads to a transfer of the embryo. Thus, contrary to the will of the donor, and even without her knowledge, another woman may give birth to a child from this cell. The adopted solution raises doubt due to the constitutionally protected right to privacy and the associated freedom to decide to have children.

The issue of the availability of the in vitro procedure will be subject to further activities of the Commissioner.

[90] Act of 25 June 2015 (Journal of Laws, item 1087).
[91] VII.534.36.2015 of 22 September 2015.
[92] Letter of 23 October 2015.

g) Varied age of entitlement for marriage

A citizen approached the Commissioner, raising the issue of unequal treatment of women and men in terms of the minimum age for marriage. The Commissioner approached the Minister of Justice[93] with a request to consider amending the regulations and extending the exception that allows to get married in the age of 16 on men, or to abolish the exception and standardise the age of marriage at 18 years of age for both sexes. According to the Commissioner, the possibility of obtaining a court-issued consent to marriage by women who turned sixteen provided for in the Family and Guardianship Code, and not by men, can be interpreted as discriminatory on the grounds of sex, and as a violation of the right to privacy and family life[94]. It should also be analysed, whether provisions of national law in general should provide a court with the possibility of expressing consent to marriage for persons under eighteen years of age.

Recognising the importance of the problem indicated by the Commissioner, the Minister of Justice[95] announced that the issue of amending Article 10(1) and (2) of the Family and Guardianship Code and Article 561(1) of the Code of Civil Procedure[96] will be taken into account during the next comprehensive amendment of the Family and Guardianship Code. The Commissioner will continue to monitor the legislative work in this respect.

h) Reconciling family and professional roles – equal treatment of parents in the labour market

In 2015, the Commissioner published the report *Reconsiliation of work and family life. Equal treatment of parents in the labour market. Analysis and recommendation*[97], which presented the result of a study commissioned by the Commissioner and the conclusions and recommendations formulated on its basis. The results of the study, as well as national and EU statistical data indicate that women are primarily burdened with the continued responsibility of child care and unpaid work at home, whereas fathers only occasionally engage in child care and domestic duties. This situation affects the lower status of women in the labour market, who often pursue low-paid jobs, work part-time, and statistically earn less than men. On the other hand, this situation leads to unfair treatment of men who use the rights associated with parenting by employers. The recommendations, which also contain *de lege ferenda* conclusions, will be given to the appropriate ministers in 2016.

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93 IV.501.12.2015 of 1 December 2015.

94 Act of 25 February 1964 (Journal of Laws of 2015, item 2082, as amended).

95 Letter of 13 January 2016.

96 Act of 17 November 1964 (Journal of Laws of 2014, item 101, as amended).

97 *Godzenie ról rodzinnych i zawodowych. Równe traktowanie rodziców na rynku pracy. Analiza i zalecenia, Zasada Równego Traktowania. Prawo i praktyka, no. 18, Biuro Rzecznika Praw Obywatelskich 2015.*

4. Combating discrimination on grounds of sexual orientation and gender identity

a) Violence motivated by homophobia and transphobia

The Commissioner is receiving information about the large scale of violence motivated by prejudice. Violence and hate speech still constitute particular forms of discrimination that affect members of national, ethnic, or religious minorities, but also the elderly, people with disabilities, non-heterosexual and transgender persons. The undertaken activities allow to draw conclusions about the inadequate efficiency and completeness of the applicable legal regulations. The category of hate crimes currently penalised in the Criminal Code includes offences committed on the grounds of nationality, race, ethnic origin, religion or lack thereof. In the Commissioner's assessment, the requirement to disclose the motives of the offender and stricter punishment should be extended to such grounds as disability, age, sexual orientation and gender identity. A firm response of the State in this respect also constitutes a guarantee of the implementation of international standards for the protection of the rights and freedoms of the victims of crimes motivated by prejudice. The Commissioner referred a motion to the Minister of Justice[98] and requested information on the results of the analysis carried out by the Ministry of Justice on hate crime, as well as to inform on further efforts to strengthen the State's response to discriminatory offences in terms of criminal law.

In response, the Minister of Justice explained[99] that the issue of protecting groups exposed to discrimination under criminal law has been analysed in the Ministry in connection with deputies' drafts of laws amending the Criminal Code. At the stage of parliamentary work, the Minister of Justice presented a position pointing to the possibility of extending the criminal law protection to discriminatory grounds such as: sex, age, disability and sexual orientation. Legislative work on these projects has not been completed before the end of the 7th term of the Sejm and the Senate. In view of the principle of discontinuing the work of the previous parliament, a return to the issue of discriminatory offences in the context of legislative amendments that take into account the position presented by the Commissioner will be possible after the start of the next term of office of the Sejm and the Senate. The case remains pending.

[98] XI.816.10.2015 of 22 October 2015.
[99] Letter of 3 November 2015.

b) Wrongful detention of a transgender person

The Commissioner accepted a case concerning the arrest of a transgender man caused by him riding a tram without a ticket and the suspicion of using someone else's documents or the personal data of another person. In connection with the accusation of derogatory treatment by Police officers[100], the Commissioner analysed the files of the investigation conducted by the Police and the Public Prosecutor's Office.

Due to the failure to question the victim and not verifying the testimony of the Police Officers, the proceedings did not – in the Commissioner's assessment – fulfil the criterion of accuracy, impartiality and independence. The Commissioner also made reservations to the proceedings carried out by the Regional Prosecutor's Office. The prosecutor carried out only one activity personally – the victim's questioning. Allegations concerning derogatory treatment were not confirmed. The most severe concerns of the Commissioner were caused, however, by the victim's arrest and the evaluation of its legality conducted by the Prosecutor in the statement of reasons of the decision not to initiate proceedings. As is clear from the justification, bringing the victim to the Police station is – in the Prosecutor's assessment – a "short-term restriction on the liberty to dispose of their freedom", which, however, does not constitute detention within the meaning of Article 244 of the Code of Criminal Procedure[101], Article 15(1)(3) of the Act on the Police[102] or other legislation. In his report from the analysis of the case files, the Commissioner drew attention to the judgement of the European Court of Human rights of 15 April 2014 in case Tomaszewscy v. Poland (application no. 8933/05), in which the Court emphasized that, in order to determine whether there has been a deprivation of liberty within the meaning of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms[103], one should take into account criteria such as the nature, time, consequences and the manner of implementation of such a measure each time, and Article 5 may be used even in the event of short-term detention. In the Commissioner's assessment, even "short term restriction of the freedom to dispose of one's liberty in order to check somebody's ID" constitutes detention and should fulfil the conditions of the Convention, the Constitution of the Republic of Poland and the relevant statutes. In the course of the proceedings, however, the legal basis for the detention of the transgender person was not determined, the detention protocol also was not drawn up, and therefore it was not possible to verify its legality or pursue possible redress or compensation for wrongful detention.

The report from the analysis of the case files, along with the reference to the judgement of the European Court of Human Rights in Tomaszewscy v. Poland, was sent to the

[100] I.e. exposure to painstaking personal inspection, offensive remarks to a detained man, referring to him as a female, which he did not want, commanding to uncover clothing.

[101] Act of 6 June 1997 (Journal of Laws No. 89, item 555, as amended).

[102] Act of 6 April 1990 (Journal of Laws of 2015, item 355, as amended).

[103] Convention drawn up in Rome on 4 November 1950 (Journal of Laws of 1993 No. 61, item 284).

Municipal, Provincial, and the General Police Headquarters[104]. The Commissioner's conclusions regarding the application of the provisions of the Act on the Police and the Code of Criminal Procedure were afterwards distributed by the General Police Headquarters to all provincial police headquarters.

c) Certificates proving full eligibility to enter into marriage abroad by same-sex persons

The Commissioner joined court proceedings on the refusal to issue a certificate proving full eligibility to enter marriage abroad by the Head of the Registry Office of the City of Warsaw due to the fact that the future spouse of the applicant is of the same sex as the applicant[105]. In the Commissioner's assessment, bearing in mind the provisions of the law on International Private Law[106], the Law on Civil Status Records[107] and the provisions of the Family and Guardianship Code[108], marital capacity is assessed in relation to the particular future spouse, making it impossible to issue a certificate to an applicant on the grounds that they intend to get married with a partner of the same sex. However, in the Commissioner's opinion, such national provisions are incompatible with law of the European Union, because they limit the freedom of movement, and also violate the provisions of the Charter of Fundamental Rights, and the Convention for the Protection of Human Rights and Fundamental Freedoms. The Commissioner pointed out that same-sex couples living in permanent relationships are protected by Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms and shall enjoy the protection of their family life, and it is the responsibility of the State to create appropriate legal conditions for such pairs, e.g. through such an assessment of the applicant's eligibility to enter marriage, to make it possible for them to get married abroad with a same-sex partner. Furthermore, the Commissioner assessed the provisions that prevent from issuing the certificate as incompatible with freedom of movement guaranteed by Article 21(1) of the TFEU, as well as a violation of the right to respect for privacy and family life and the principle of non-discrimination guaranteed by the Charter of Fundamental Rights.

In the Commissioner's assessment there were sufficient grounds for the Regional Court in Warsaw to refuse using provisions of the Polish law that are incompatible with EU law, and concluded that the refusal to issue the certificate was unreasonable. As is apparent from the case-law of the Court of Justice of the European Union, it is not just the courts but also the authorities that are obliged to apply the principle of the primacy of EU law and thus ensure its full efficiency. In the procedural document, the Commissioner made an

[104] XI.518.3.2016 of 30 March 2015.
[105] XI.504.1.2016 of 13 May 2015.
[106] Act of 4 February 2011 (Journal of Laws of 2015, item 1137).
[107] Act of 28 November 2014 (Journal of Laws, item 1741, as amended).
[108] Act of 25 February 1964 (Journal of Laws of 2015, item 2082).

argument to refer to the Court of Justice of the European Union for a preliminary ruling. The Regional Court, however, did not agree to the Commissioner's proposal and dismissed the appeal of the applicant[109].

d) Discrimination against transgender people in employment

For the fulfilment of the Commissioner's tasks related to independent research on discrimination, a study was commissioned in 2015 entitled *Dyskryminacja osób transpłciowych w zatrudnieniu (Discrimination against Transgender People in Employment)*. Its main purpose was to determine whether and to what extent transgender persons face discrimination in the labour market. The data collected will allow to assess the practical application of the mechanism for protecting citizens against discrimination in employment, transgender persons in particular. In order to deepen the knowledge, an omnibus-type study was carried out on a nationwide representative sample on the attitude of Poles towards transgender people. The results of the study will be presented in 2016, as a report from the series "Zasada równego traktowania. Prawo i praktyka" (The Principle of Equal Treatment. Law and Practice).

5. Combating discrimination on grounds of age

a) The amounts of pensions and disability pensions cleared of deductions

The Commissioner continued his activities concerning debt enforcement against the lowest pensions benefits[110]. The limits and amounts cleared of deductions in the case of debt enforcement against wages are specified in the provisions of the Labour Code. The Act on Pensions from the Social Insurance Fund[111], however, does not contain similar restrictions. In the Commissioner's assessment there is no justification for the differentiation between the situations of a debtor who continues to work and one who lives off benefits from pension schemes.

In the Commissioner's opinion, the legislature – while shaping the system of deductions from pension schemes – should take into account the principle of social justice, which remains closely related to human dignity. The amount free from deductions aims to leave the minimum income necessary to meet basic needs. The applicable income thresholds entitling to apply for social assistance correspond to the category of minimum subsistence

[109] Decision of 28 October 2015.
[110] III.512.2.2014 of 21 December 2015.
[111] Act of 17 December 1998 (Journal of Laws of 2015, item 748, as amended).

income, below which there is a biological threat to life and human development. Meanwhile, a comparison between income criteria, which aim to ensure minimum subsistence, and the amount clear of deductions and debt enforcement – as set out in the pensions act – indicates that the free amount, corresponding to 50% of the lowest pension, lies below the poverty line. This issue will be the subject of further activities of the Commissioner.

b) Medical certificates for seniors participating in sporting activities

The elderly community drew the Commissioner's attention to the fact of levying charges for issuing medical certificates on the lack of health contraindications to perform sports activities. It raises certain concerns, especially since one of the priorities of the senior policy in Poland is the development and promotion of physical activity, in order for the elderly to maintain good health as long as they can and live autonomous, independent and satisfying lives. The Commissioner asked to consider the possibility of amending the existing regulations[112] so that the medical certificates concerning the participation in sports activities can be classified as healthcare services financed from public funds.

In his response, the Minister of Health shared the Commissioner's doubts and pointed out[113] that the matter of issuing free certificates about the lack of health contraindications to perform sports activities to seniors citizens will be addressed during the next revision of the Act on health care services financed from public funds[114].

c) Age limit for serving as a court enforcement officer

In 2014, the issue of a reintroduction of the age limit after which court enforcement officers are required to cease from further exercise of professional activities into the Act on Court Enforcement Officers and Enforcement Proceedings[115] raised the Commissioner's concerns. With this in mind, the Commissioner approached the Minister of Justice concerning the need address the appropriate amendment of the contested statutory regulation[116]. As a result of a negative opinion of the Ministry of Justice[117], the Commissioner turned to the President of the National Council of Judicial Officers asking for an official position of the court enforcement officers' community[118].

112 V.7010.111.2015 of 19 November 2015.
113 Letter of 28 December 2015.
114 Act of 27 August 2004 (Journal of Laws of 2004 No. 210, item 2135, as amended).
115 Act of 27 August 1997 (Journal of Laws of 2015, item 790, as amended).
116 I.801.17.2014 of 1 July 2014.
117 Letter of 22 August 2014.
118 I.801.17.2014 of 28 August 2014.

The National Council of Judicial Officers informed[119] that it shares the Commissioner's reservations relating to the non-compliance of the provision regarding the age limit with the standards of Community law. The court enforcement officers' professional association noted, however, that possible limitations of psycho-physical nature – indicated by the Ministry of Justice – do not arise each time in people with the attainment of a certain age, which is why a uniform treatment of persons serving as court enforcement officers does not seem to be justified. The National Council of Judicial Officers proposed that the solution could be to introduce a regulation, according to which it would be possible, at the request of the person interested in continuing their occupation, to perform an individual assessment of their ability to pursue the position of a court enforcement officer. The Commissioner is considering the merits of further action in this regard.

d) The rules and scope of community-based care for the elderly

For the fulfilment of the tasks of an independent authority for equal treatment, the Commissioner ordered a social survey entitled *Zasady i zakres wsparcia środowiskowego dla osób starszych* (*Rules and scope of community-based care for the elderly)*. This study was conducted among communes in the Lower Silesia Province, in which an average proportion of people aged 65+ in the population is recorded. The primary objective of the study was to obtain information on how decision makers at the level of communal authorities understand and implement community-based care policies for the elderly in the context of the implementation of human rights. The second goal was to look at the scope of provided care and therefore – the availability of appropriate services at the local level. The study constituted the empirical component for social support model for seniors in their place of residence, prepared by the members of the Expert Committee on Elderly People and will be published in print in 2016.

6. Combating discrimination – general issues

a) Increasing legal protection against unequal treatment of persons employed under civil law contracts

The Commissioner approached the Prime Minister[120] on the need to introduce mechanisms aimed at protecting employment on the basis of civil law contracts and extending

[119] Letter of 3 December 2015.
[120] III.7041.33.2014 of 14 October 2015.

the competencies of labour inspectorates in terms of supervision and control over such employment. In his motion, the Commissioner drew attention to the large scale of employment under civil law contracts in the Polish labour market. This phenomenon is a response to changing demand and higher employment costs. It takes the form of pursuing employment not only by the conclusion of contracts of mandate or contracts for specific work, but also through self-employment, which most often constitutes contracting the performance of specific tasks by the employer to outside contractors, who are natural persons running a sole proprietorship. Former employees often become such entrepreneurs, as they are subsequently outsourced due to the need to reduce labour costs.

In response, the Minister of Family, Labour and Social Policy presented a draft law amending the Act on the Minimum Wage and the Act on the National Labour Inspectorate. The draft aims to achieve positive changes in the labour market by countering the abuse of civil law contracts and the introduction of measures protecting persons receiving remuneration at the lowest level. The Commissioner accepts the direction adopted in the draft law.

b) Anti-discrimination education

The question of how to implement the anti-discrimination education in educational establishments remains of interest to the Commissioner. It is of particular importance, since shaping appropriate attitudes – in particular those respecting the dignity of every human being – is one of the basic tasks of the educational process. In the Commissioner's assessment, there is a need for further efforts to support teachers in this field, taking into account the constitutional right of parents to bring up their children according to their own world view.

Given the atmosphere of the ongoing public debate in Poland about migrants, which does not facilitate the creation of the attitude of respect and openness, the Commissioner drew attention to the role of anti-discriminatory education. The picture of reality and the media and Internet coverage affect children and adolescents, influencing their attitudes and opinions. A particularly appalling event was the burning of a Jew-like effigy during a protest in Wrocław[121], reflecting established anti-Semitic attitudes. It is therefore necessary to counter negative stereotypes primarily through educational activities in schools and other educational establishments. The aim of anti-discriminatory education is to raise pupils' awareness concerning other human beings, passing the knowledge on human rights and measures to protect them, as well as the skill to act according to principles of solidarity, democracy, tolerance, justice and freedom. Children and young people, equipped in the relevant knowledge by schools, can change the attitudes of their families and their environment, and contribute to a further-reaching social change. Passing knowledge to children

[121] On 18 November 2015.

and adolescents may also protect them from danger of joining movements and organizations that refer to Nazi ideology, based on racism and anti-Semitism. The Commissioner approached the Minister of National Education[122], the President of Wroclaw and the Commander of the Municipal Police in Wrocław in this matter[123]. Promotion of anti-discriminatory education will be the subject of further activities of the Commissioner.

c) The scope of the Act on Equal Treatment

The Commissioner joined[124] the proceedings concerning the rejection of a claim made by a woman who demands compensation for breach of the principle of equal treatment on grounds of sex and maternity during recruitment. The applicant filed two lawsuits. The first – before a labour court, concerning discrimination, which took place during a job interview, when she was seeking employment under an employment contract, and the second – before a civil court, concerning discrimination, which took place during a job interview, when she was seeking employment on the basis of a civil contract. The Regional Court, in its justification of the decision on rejecting the second action, pointed out, among others, that in its view the Act of 3 December 2010 on the implementation of some regulations of the European Union regarding equal treatment, on the basis of which the applicant requested compensation, only indicates general guidelines on the prohibition of discrimination and no direct claim arises from it. However, in accordance with Article 13(1) of this act, everyone, against whom the principle of equal treatment has been violated, is entitled to damages. Therefore, there is no doubt that the provisions of the act allow to seek compensation for its violation, and the act itself prohibits discrimination in the field of employment to persons employed on the basis of civil contracts, not only under a contract of employment. Having in mind a very small number of lawsuits for damages under the Act of 3 December 2010 on the implementation of some regulations of the European Union regarding equal treatment, in the Commissioner's assessment it is particularly relevant to shape such a standpoint of courts, which promotes special treatment of cases related to discrimination. The Commissioner joined the proceedings on the complaint against the decision of the court of first instance to reject the lawsuit. The decision was repealed, and the case was sent for re-examination.

[122] XI.519.1.2015 of 1 December 2015.
[123] XI.519.1.2015 of 27 November 2015.
[124] VIII.801.14.2015 of 22 October 2015.

II. The activity of the Commissioner for Human Rights in order to promote, protect and monitor the implementation of the provisions of the Convention on the Rights of Persons with Disabilities and the prevention of discrimination on the grounds of disability

1. The definition of disability (Article 1 of the Convention on the Rights of Persons with Disabilities)

Different definitions of disability in different assessment systems

In Poland, there are currently four different assessment systems: on the incapacity for work, on the incapacity for work on a farm, on the incapacity for service, and on disability and degree of disability. The first three systems function as assessment systems for the purposes of pensions, whereas the fourth system is a non-pension and non-insurance system, which determines the restrictions in independent existence and performance of social roles caused by physical impairment and contains indications for professional and social rehabilitation, as well as other reliefs and entitlements for people with disabilities.

In response to the Commissioner's request[125] to align, for the purposes of benefits resulting from the pensions act, the certificate on the degree of incapacity for work with the certificate on incapacity to work, the Minister of Family, Labour and Social Policy pointed out[126] that these certificates are issued for different purposes, hence the revision of the existing legislation in this regard is not currently warranted.

Detailed conclusions and recommendations of the Commissioner in defining disability and disability assessment systems have been described in the Report of the Commissioner for Human Rights on the implementation of the obligations arising from the Convention on the Rights of Persons with Disabilities by Poland[127].

2. Access to justice (Article 13 of the Convention)

Availability of the justice system for people with disabilities

As part of his statutory competences, the Commissioner ordered a social survey entitled *Dostępność wymiaru sprawiedliwości dla osób z niepełnosprawnościami* (*Availability of the justice system for people with disabilities*). The primary objective of the study was to provide knowledge about the mechanisms and barriers which result in unequal treatment on grounds of disability in court and prosecution proceedings. In particular, the attitudes

[125] III.7060.1037.2015 of 14 December 2015.
[126] Letter of 26 January 2016.
[127] The report is available at: https://www.rpo.gov.pl/pl/content/realizacja-przez-polske-zobowiazan-wynikajcych-z-konwencji-o-prawach-osob-niepelnosprawnych.

and experiences of judges and prosecutors in proceedings involving persons with disabilities have been verified, as well as the experiences people with all kinds of disabilities had while being involved with the justice system. A separate study concerned the architectural and infrastructural availability of courts and prosecutors' offices. A detailed report will be published in print in 2016.

3. Liberty and security of the person (Article 14 of the Convention)

a) Adapting the premises for detainees or persons brought for sobering-up in the organisational units of the Police to the needs of people with disabilities

The representatives of the National Preventive Mechanism (*Krajowy Mechanizm Prewencji*)[128] examine the degree of adaptation to the needs of persons with disabilities during preventive visits, among others, to rooms for detainees or persons brought for sobering-up in organisational units of the Police. In a vast majority of Police headquarters, the employees of the Office of the Commissioner determined that the provisions of the Charter of Rights for Persons with Disabilities adopted by the Sejm[129], as well as the Convention on the Rights of Persons with Disabilities ratified by Poland, were not observed. In their post-visit reports, the representatives of the NPM pointed to the need to equip those facilities with amenities for people in wheelchairs or with reduced mobility, and the elimination of architectural barriers when carrying out renovation works that require a building permit. During the meeting between the representatives of the NPM and the representatives of the General Police Headquarters, it was found that the facilities that meet standards conforming to the needs of people with disabilities will be designated, where people in need of special conditions of stay will be brought. In his motion to the Commander-in-Chief of the Police, the Commissioner requested[130] the expected date of full adaptation of the premises designated by the Police to the needs of persons with disabilities, and an indication of individual rooms adapted to persons with disabilities in each of the provincial police headquarters.

[128] The National Preventive Mechanisms is an independent, state visiting body established pursuant to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the United Nations General Assembly on 10 December 1984 (Journal of Laws of 1989 No. 63, item 378). On 18 January 2008, the tasks of the National Preventive Mechanism were entrusted to the Commissioner for Human Rights.

[129] Resolution of the Polish Sejm of 1 August 1997 (Monitor Polski of 1997 No. 50, item 475).

[130] KMP.570.1.2014 of 24 July 2015.

In his response, the Commander-in-Chief of the Police stated[131] that the adjustment of premises for detainees or persons brought for sobering-up to the needs of people with physical disabilities or persons in wheelchairs must be preceded by or carried out simultaneously to the adaptation of individual structures belonging to those particular units of the Police, where these facilities are located. For this reason, the fulfilment of the technical requirements in this regard is a long process and, in particular, requiring large financial outlays. On 10 August 2015, the Commander-in-Chief of the Police directed a letter to Provincial Police Commanders and the Warsaw Metropolitan Police Commander, in which he recommended, as far as their abilities allow, to undertake efforts aimed at the successive adaptation of facilities, so that ultimately in each Police garrison there was at least one room for detainees or persons brought for sobering-up, which shall meet the technical conditions for placing people with mobility impairments or persons in wheelchairs in them.

In the subsequent motion, the Commissioner welcomed the Police's declaration to continue adapting facilities for detainees or persons brought for sobering-up to the needs of people with disabilities[132]. At the same time, he noted that not all premises indicated by the Police comply with accessibility standards for people with disabilities or who have difficulty moving. Appropriate solutions should include the entire way from the entrance to the headquarters or the police station, to rooms for detainees and sanitary facilities. In particular, they should be adapted accordingly and equipped with amenities for people in wheelchairs, as well as ensure safe movement of persons with visual impairments. The Commissioner also asked for information on the solutions adopted in respect of placing people with disabilities in rooms for detainees. The case is still being monitored.

b) The situation of people with physical disabilities detained in prisons and detention centres

Previous visits of the representatives of the National Preventive Mechanism to prisons and detention centres allow one to state that in some of the visited penal institutions there are no evacuation plans in place for people with disabilities or those present in safety manuals are described in a very general manner. In the Commissioner's opinion, the procedures for evacuating people with disabilities should take account of the guidelines of personnel's conduct in respect of them in case of emergency, including the manner of alerting the detainees, as well as indicate the additional duties of other employees of the structure, in which the evacuation takes place. The basic principles of evacuation should be consistent for all prisons and detention centres, and then extended by the security departments of individual penal institutions to issues related to the specificity of a given institution.

[131] Letter of 17 August 2015.

[132] KMP.570.1.2014 of 17 December 2015.

In his response to the Commissioner's motion concerning this matter[133], the Director-General of the Prison Service reported[134] that in each organisational unit of the Prison Service there is a fire safety manual specifying the principles and procedure for officers in the event of an emergency, developed on the basis of the provisions of the ordinance of the Minister of the Interior and Administration concerning fire-protection of buildings and other building structures and areas[135]. No one suffered any injuries during fire incidents which occurred within the last ten years in penal institutions belonging to the Prison Service. The analysis of the rescue and fire-fighting operations and evacuation of prisoners, including prisoners with disabilities, do not indicate that a clarification of the internal procedures of individual institutions in order to improve the safety of this category of prisoners is validated.

The next issue raised by the Commissioner is the case of a person with a severe degree of disability remaining in temporary detention[136]. On the basis of this case, it can be concluded that many of the cells for people with disabilities still are not adapted to the needs of this group of prisoners. The infrastructure of penal institutions also remains as a barrier to the exercise of their rights, such as the right to visitation, the right to go for a walk or to a warm bath. The Prison Service is not making sufficient efforts to alter this state of affairs. The problem of providing prisoners with severe disabilities with 24-hour care and assistance in performing basic everyday tasks still has not been solved. The solution to this issue is barred by a number of difficulties, however, provision of 24-hour care carried out by medical staff to persons with severe disability, in the light of the case-law of the European Court of Human Rights, seems to be the penal institution's duty. In addition, in his motion the Commissioner called for the Prison Service to turn to the penitentiary judge holding supervision over the legality and correctness of the execution of the sentence of imprisonment and detention in the event any doubts arise concerning the inmate's ability to be detained in a given institution or in prison isolation at all.

In his response, the Director-General of the Prison Service announced[137] that the construction of new penitentiary blocks, in accordance with § 6(3) of Guideline No. 3/2011 of the Director-General of the Prison Service of 4 October 2011 on the technical and security requirements for penitentiary blocks, takes into account accommodation for people with disabilities. During the modernisation of penal institutions and healthcare institutions operating on their premises, adapting them to the needs of people with disabilities is taken into account if financially possible. Currently, there are 100 cells adapted for people in wheelchairs with a total of 307 places of accommodation in 57 penal institutions (as of September 2015).

[133] KMP.571.1.2015 of 26 October 2015.
[134] Letter of 16 November 2015.
[135] Ordinance of 7 June 2010 (Journal of Laws No. 109, item 719).
[136] IX.517.411.2015 of 7 December 2015.
[137] Letter of 5 January 2016.

c) The situation of people with intellectual or mental disabilities detained in prisons and detention centres

The Commissioner repeatedly drew the attention of prison authorities to problems concerning the functioning of people with intellectual or mental disabilities in penal institutions. Employees of the Office of the Commissioner visited four diagnostic centres in 2015. The visiting employees met with all patients of these centres and listened to the information and observations provided by employees. The living conditions in many prison cells located in the visited diagnostic centres were very harsh. Highly qualified personnel, with a high level of professional competence and commitment to the duties assigned to them is an important asset of the visited centres. However, due to the absence of a sufficient number of specialists in diagnostic centres and the long waiting period to carry out target psychological and psychiatric examinations, it seems that the system of directing patients to diagnostic centres requires rationalisation.

In the Commissioner's assessment, there is a need to organise trainings for officers covering topics such as early diagnosis of the detained and how to deal with people suffering from intellectual or mental disabilities. In addition, the Commissioner drew attention to the lack of systemic solutions concerning situations where there is doubt as to whether the prisoner, due to intellectual or mental disability, should remain in prison isolation. It is the duty of the Prison Service to inform courts about the imprisonment of persons, whose mental illness or the degree of physical and mental development does not allow to achieve the objectives of the penalty set out in the Executive Penal Code. Such a situation should also be notified to the penitentiary judge, who supervises the legality and correctness of the enforcement of prison sentences or temporary detention. Therefore, the Commissioner requested the Director-General of the Prison Service to present a statement on the matter[138].

4. Living independently and being included in the community (Article 19 of the Convention)

The situation of persons with disabilities residing in residential homes against their own will

One of the unexecuted judgements of the European Court of Human Rights is a judgement of 2012 on the rules for placing persons suffering from mental illness in residential care homes. In this judgement, the Court held that Poland had breached the provisions

[138] IX.517.2.2015 of 21 December 2015.

of the Convention against a mentally-ill person, who was placed in a residential home against their will based on a decision of their legal guardian. The provisions of the Act on Mental Health[139] do not provide for an automatic judicial review of the legality of placing and detaining a person in a care facility such as a residential home. In addition, such an evaluation cannot be initialized by a legally incapacitated person. Therefore, the Commissioner requested information[140] about the progress made by the Ministry of Health in relation to the draft amendment of the Mental Health Act and certain other laws, and what is the scope of this draft.

In July 2015, the draft assumptions to the act amending the Mental Health Act and the Act on Upbringing in Sobriety and Alcoholism Prevention[141], which included the changes requested by the Commissioner, was at the stage of negotiations between the Chancellery of the Prime Minister and the Ministry of Foreign Affairs. However, due to the fact that legislative works in this regard were halted, the Commissioner submitted an application to the Constitutional Tribunal on the rules for placing incapacitated persons in residential care homes[142]. The Commissioner challenged the provisions of the Mental Health Act, according to which a person with intellectual or mental disability, with a legal guardian acting on their behalf, is not able to challenge the decision of a custody court on the consent to place them in a care home, and in addition, in the event of a change of factual circumstances (improvement in mental health, possibility to receive care from other persons) it is not possible to ask the court to change that decision.

In the application, the Commissioner argued that the existing guarantees for the protection of the rights of people with mental or intellectual disabilities should be assessed as insufficient and ineffective. It seems necessary to secure the rights of this group of people in such a way, that will prevent arbitrary deprivation of their personal freedom, ensure respect for their inherent dignity, observe the right of access to court and the right to fair proceedings. The rigour in residential care homes significantly interferes with the decision-making freedom and autonomy of the persons placed there. For these reasons, in the Commissioner's assessment, the only condition for justifying the omission of the will of a completely incapacitated person when deciding on placing them in a care home may be the inability to express it.

[139] Act of 19 August 1994 (Journal of Laws of 2011 No. 231, item 1375, as amended).
[140] XI.517.1.2015 of 25 May 2015.
[141] Letter of 1 July 2015.
[142] XI.517.1.2015 of 3 November 2015.

5. Personal Mobility (Article 20 of the Convention)

Parking cards for people with disabilities

According to the Act on Road Traffic, a parking card is issued to people with moderate or severe degrees of disability, who suffer from greatly reduced mobility. The request for a parking card shall be submitted to the Head of the Disability Assessment Board competent due to the place of residence of the disabled person within the meaning of the regulations on the register of population and identity cards.

After analysing the citizen's application, the Commissioner submitted a complaint[143] before the Provincial Administrative Court in G. seeking annulment of the decision, in which the authority wrongly assumed that the applicant's failure to complete the registration for permanent residence in R. is equivalent to the absence of permanent residence status in this town. In fact, when determining the jurisdiction of a given authority, the legislature prescribes to follow a person's permanent place of residence within the meaning of regulations on the population register, and not the address registered for permanent residence. The lack of registration does not, therefore, cause that the person does not reside permanently in a given town. In the Commissioner's assessment, the authority also violated the standards resulting from the Code of Administrative Procedure[144] by failing to conduct an evidentiary hearing in order to determine the applicant's permanent place of residence.

The Provincial Administrative Court in G. upheld the Commissioner's complaint and annulled the contested act. The court shared the Commissioner's position concerning the understanding of the concept "permanent place of residence of a person with disability within the meaning of the regulations on the population register and identity cards". In the court's assessment, there are no grounds to claim that the refusal to issue the card constitutes and administrative decision.

The Commissioner did not concur fully to the justification provided by the Provincial Administrative Court in G. and requested a cassation before the Supreme Administrative Court. The Commissioner considered that, while issuing a parking card falls within the category of "acts and actions pertaining to public administration other than decisions and resolutions", the refusal to issue such card does not. The latter is not a simple implementation of a legal norm, but an authoritative decision of a competent authority, taken as a result of realising this norm in relation to a particular recipient, binding through determining the legal consequences of certain facts. Currently, the Commissioner awaits the consideration of the appeal in cassation before the Supreme Administrative Court.

143 V.811.212.2014 of 21 January 2015.

144 Act of 14 June 1960 (Journal of Laws of 2016, item 23).

6. Freedom of expression and opinion, and access to information (Article 21 of the Convention)

a) Web accessibility of public institutions for people with disabilities

In his motion to the Minister of Digital Affairs[145], the Commissioner drew attention to the problem of adapting the websites of public institutions to the needs of people with disabilities. The availability of IT tools and their adaptation to the special needs of people with disabilities is inseparably involved with the constitutional right to access information, in particular with the right to information about the activities of public authorities and persons performing public functions. The minimum requirements for IT systems, including ways to ensure the availability of public information for persons with disabilities are specified in the Regulation of the Council of Ministers on National Interoperability Frameworks, the minimum requirements for public and information exchange digital registers and the minimum requirements for ICT systems[146]. The deadline for adjusting all public websites to meet the needs of people with disabilities has expired on 31 May 2015.

The Convention on the Rights of Persons with Disabilities requires States Parties to undertake measures aimed at enabling persons with disabilities to exercise their right to information on an equal footing with other people. The report released in 2013 by the Commissioner, in cooperation with the Foundation Institute for Regional Development, shows that none of the websites examined back then was fully accessible for people with disabilities and other persons exposed to the digital divide. Availability of public websites was also the subject of a survey conducted among local government units in the years 2014-2015. The results indicated that a significant number of local government units are unaware of the obligation to adapt websites to the requirements of the law. The Commissioner asked for an explanation involving what steps have been taken in order to meet the deadline for ensuring full accessibility of public websites, as well as how the Ministry of Digital Affairs intends to ensure the accessibility of websites operated by local government units.

The Minister of Digital Affairs informed[147] about the Ministry's activities supporting public entities in the implementation of the requirement to ensure full accessibility of public websites. An example of such activities is the grant round for the construction or adaptation of public websites to meet the needs of people with disabilities organised in 2015. In addition, the Ministry of Digital Affairs is actively involved in legislative work on the adoption of the Directive of the European Parliament and of the Council on the availability of websites of public entities. The adoption of this legal act will strengthen the existing national regulations. It will also allow to more effectively influence public bodies in the implementation of legal regulations. There is a knowledge base about accessibility on the

[145] VIII.420.4.2014 (new number XI.815.1.2016) of 2 December 2015.
[146] Regulation of 12 April 2012 (Journal of Laws No. 526, as amended).
[147] Letter of 29 December 2015.

website of the Ministry of Digitisation, containing a number of important information for employees of bodies pursuing public tasks, which are necessary in the process of ordering a new website or adapting an already existing website.

b) Problems encountered by deaf and deafblind persons with public authorities

Studies carried out by the Commissioner show that more than a quarter of public authorities fail to fulfil the obligations imposed by the Act on Sign Language[148] in relation to deaf persons, and more than three quarters in relation to the deafblind. In the Commissioner's assessment, it will be necessary to amend both the regulations, and the practical application of the law in order to observe the right of the deaf and deafblind to communicate in official matters using a freely chosen method of communication. Interpreting services for the deaf and deafblind should be available in all institutions financed or co-financed from public funds. In particular, this applies to healthcare institutions. Studies provide examples of deaf or deafblind persons, who were not able to benefit from the right to health care due to communication barriers.

In the Commissioner's assessment, a certificate on the degree of disability should not be required from those persons, which is the condition for obtaining access to free interpretation services. The matter of refunding the costs of interpreters hired by deaf or deafblind persons from the funds of the obliged entity intended for this purpose should also be regulated. This regulation should remain independent from possibility to finance the services of a sign language interpreter or interpreter/guide from district funds. It is also necessary to increase supervision over the implementation of the Act on Sign Language. The Commissioner forwarded these observations[149] to the Government Plenipotentiary for Disabled People.

7. Respect for home and the family (Article 23 of the Convention)

The right to marry and found a family by people with health impairments

The Commissioner requested the Constitutional Tribunal[150] to declare the unconstitutionality of two provisions of the Family and Guardianship Code[151] concerning circum-

148 Act of 19 August 2011 (Journal of Laws No. 209, item 1243, as amended).
149 XI.501.1.2015 of 4 December 2015.
150 IV.501.7.2015 of 12 May 2015.
151 Act of 25 February 1964 (Journal of Laws of 2015, item 2082, as amended).

stances precluding marriage, and circumstances justifying the annulment of marriage. The first of the contested provisions, as a general rule, deprives persons suffering from health impairments – with full or limited legal capacity (not totally incapacitated) – of the right to marry and to found a family. These persons can obtain such a right only exceptionally and with the permission of the court.

In his application to the Constitutional Tribunal, the Commissioner pointed out that the contested provision of the Family and Guardianship Code is inconsistent with the provisions of the Constitution of the Republic of Poland on the respect and protection of human dignity. The continued presence of this provision in the legal system debases people with health impairments and raises a justified feeling of resentment. The challenged provision is also inconsistent with the provisions of the Constitution on the right of each person to legal protection of their privacy, family life, honour and good reputation, and the right to decide about one's private life, because provisions that are vague, ambiguous and inadequate to the current medical knowledge interfere with the right to marry and found a family. In addition, the disputed provision limits the right to protection of family life and the right to control one's life in a disproportionate manner.

In accordance with the second of the challenged provisions, any of the spouses may request an annulment of marriage due to the mental disease or intellectual impairment of one of the spouses. In the course of annulment proceedings, the court is obliged, as in the case of the marriage permit, to investigate whether the mental illness or intellectual impairment threatens marriage or health of future offspring. The allegations of unconstitutionality formulated in the Commissioner's application mirror those concerning the previous provision.

8. Education (Article 24 of the Convention)

a) Errors in the calculation of educational subsidy

The Commissioner is receiving complaints from representatives of communes, which face the problem of underfunding of education in connection with audits carried out by the Treasury Control Office and the decisions of the Minister of Finance on the need to return unduly collected amounts of the educational part of the general subsidy to the National Budget. In his motion to the Minister of National Education[152], the Commissioner pointed out that he does not oppose the enforcement of incorrectly credited and unduly collected amounts by the Ministry of Finance, because public spending should always be carried out

[152] VIII.7036.1.2015 of 20 February 2015.

in an honest and transparent manner. The growing scale of the problem, however, may have a considerable impact on the situation of children with disabilities.

In the Commissioner's view, some of the shortcomings may result from the considerable complexity of the regulations governing the calculation of the subsidy and the lack of a uniform decision-making system. School-governing authorities are primarily responsible for creating equal conditions for the observance of the right to education by children with disabilities. Underfunding of local governments, resulting from the implementation of a recovery decision will worsen the situation of pupils with disabilities, who may receive specialist aid to a lesser extent than necessary due to the lack of financial resources. In addition, the Commissioner requested information whether the Ministry of Education is working on, or planning to work on, measures to prevent situations in which mistakes in the calculation of the amount of educational subsidy due to the local governments are made on a large.

In her response, the Minister of National Education explained[153] that in the light of the findings of the Treasury Control Offices, the most common causes of the recovery unduly collected amounts of the educational part of the general subsidy, include: the lack of a certificate on the need for special education or an expired certificate, incorrect classification of a student to a particular category of disability, including multiple disability, as well as declaring children without the need for early development assistance as covered by these activities. Having in mind the importance of clear and precise regulations for, among others, the correctness of information reported to the Educational Information System, the Ministry of Education began working on key ordinances concerning special education. An ordinance of the Minister of National Education was drafted on decisions and opinions issued by assessment boards operating in public psychological-educational counselling centres. The model decisions annexed to the proposed ordinance include, respectively, types of disabilities, social maladjustment, or risk of social maladjustment to be selected by the assessment board of a public psychological-educational counselling centre and serve as a basis for the decision about the need for special education. The Commissioner is monitoring the legislative work in this respect.

b) Special scholarship for students with disabilities

The Commissioner is receiving complaints, which show that the existing provisions of the Act on Higher Education are inadequate to the situation of students with disabilities[154]. In accordance with the law, a student who continues to study on another faculty after graduating from the first one is not entitled to material assistance, among others, in the form of a social scholarship for people with disabilities. Already in 2013, the Commissioner

[153] Letter of 23 March 2015.

[154] Act of 27 July 2005 (Journal of Laws of 2012, item 572, as amended).

approached the then Minister of Science and Higher Education with a request to include the problem of scholarships on a second faculty pertaining to students with disabilities in the amended Act on Higher Education. Unfortunately, the proposed change was not included in the amendment to the Act. In the Commissioner's assessment, the situation of people with disabilities, whose dysfunction was founded during or after graduating from the first faculty, and who did not receive social scholarship back then, requires a solution that provides the necessary support to these students. The Commissioner requested the Minister of Science and Higher Education[155] for position on the matter and information whether the presented issues have been analysed for possible legislative changes.

In response, the Minister of Science and Higher Education pointed out[156] that during the last amendment to the Act on Higher Education, the possibility of applying for a special scholarship on another faculty by persons with disabilities was being considered, provided that the disability acquired while still studying or after graduation resulted in the need to retrain or acquire new skills in order to pursue employment. Ultimately, this proposal was not implemented. Among others, the necessity to create objective criteria for granting social scholarship for persons with disabilities due to the need for retraining raised certain concerns. This issue will be the subject of further activities of the Commissioner.

c) Access to academic education for persons with disabilities.

In his motion to the Minister of Science and Higher Education[157], the Commissioner presented key findings from the report entitled *Dostępność edukacji akademickiej dla osób z niepełnosprawnościami. Analiza i zalecenia*[158] (*Access to Academic Education for Persons with Disabilities. Analysis and recommendations*). Research carried out in 2014 on behalf of the Commissioner, which constitutes the basis for the report, indicates that students with disabilities face not only architectural and communication barriers, but also those arising from the mentality of some university employees and other students, which in extreme cases prohibit them from pursuing or continuing education on a university. The most glaring problem is the exclusion of people with disabilities from the group of potential students of certain universities, sometimes in the form of specific provisions in the regulations applicable in a given university, or commissions verifying the ability of candidates or students.

In the Commissioner's view, possible restrictions of access to academic education must be based on objective and reasonable considerations, and relate to individual persons, and not to all people with disabilities. The Commissioner also suggested amending the provisions of the Act on Higher Education, so as to enable universities to support people with

[155] VIII.7033.1.2014 of 20 February 2015.
[156] Letter of 1 April 2015.
[157] XI.7033.2.2015 of 1 December 2015.
[158] *Dostępność edukacji akademickiej dla osób z niepełnosprawnościami. Analiza i zalecenia,* Zasada Równego Traktowania. Prawo i praktyka, no. 16, Biuro Rzecznika Praw Obywatelskich, Warsaw 2015.

disabilities who participate in post-graduate studies and allow students with disabilities to receive special scholarship while studying in another faculty, if they were not entitled to it before graduating from the first faculty. However, regular trainings on the special needs of people with disabilities organised for university employees may contribute to reducing the stereotypical perception of disability. The Commissioner requested a position on the issues raised.

In response, the Minister of Science and Higher Education[159] thanked for the report and informed that the proposals made by the Commissioner will be re-examined during amendment works to the Act on Higher Education. In addition, the Minister pointed out that any input concerning the possibility of unequal treatment of university candidates or students and doctoral students is quickly and carefully examined in the Ministry, and troubling signals about the irregularities in the universities' conduct in relation to persons with disabilities are in decline.

d) Availability of the faculty of physiotherapy for university candidates and students with disabilities

The Commissioner received an application concerning discrimination against a person with disability during the university recruitment process. The applicant has a moderate degree of disability. Under the Rector's decision she was admitted to the 1st year of university to study physiotherapy. Afterwards, she received a decision expelling her from the register of students, as the regulation for studies only allowed candidates with a mild degree of disability.

In the Commissioner's opinion, the Rector's decision violates the constitutional principle of equal access to education due to the discriminatory treatment of candidates with moderate or severe degree of disability. Freedom in determining recruitment policies on each faculty may not constitute justification for the use of discriminatory practices or ones favouring a select groups of candidates for higher education. In view of the above, the Commissioner submitted a complaint before the Provincial Administrative Court in W. against the decision of the Rector to expel the applicant from the register of students[160].

The Provincial Administrative Court in W. upheld the Commissioner's complaint, by stating that the legal basis of the Rector's decision was flawed, and the decision alone was delivered in blatant violation of the law. The Court held that Article 190 of the Act on Higher Education[161] could not constitute the basis for the student's expulsion from the register of students as the conditions referred to in that provision do not include circumstances indicated by the Rector in his decision, i.e. "non-compliance with the terms

[159] Letter of 21 January 2016.
[160] BPW.7036.2.2014 of 11 May 2015.
[161] Act of 27 July 2005 (Journal of Laws of 2012, item 572, as amended).

of recruitment" and the need to "remove the defect in the decision on admittance as a student". The judgement is not final.

9. Adequate standard of living and social protection (Article 28 of the Convention)

a) Legal situation of carers of people with disabilities

In numerous applications to the Commissioner, carers of people with disability, as well as the disabled themselves, express concern at the lack of legislative action aimed at the implementation of the Constitutional Tribunal's judgements[162] in cases concerning the caregivers' right to care allowance. In the Commissioner's assessment, implementation of these judgements should become one of the priorities of the Government. Another problem pointed out by the Commissioner are restrictions on access to pre-retirement benefits pertaining to caregivers entitled to care allowances, who lose their financial support from the State as a result of events beyond their control, such as the death of their ward. Return to the labour market after decades of exclusion and loss of care allowances for reasons beyond their control, is severely hindered and often even impossible. In the Commissioner's assessment, carers such a situation should be able to obtain the right to pre-retirement benefits. In view of the above, the Commissioner requested the Minister of Family, Labour and Social Policy to present a position of the issues raised[163].

Responding to the motion, the Minister of Family, Labour and Social Policy reported[164] that analysis on changing the support system for people with disabilities, their families and carers of people with disabilities are being conducted. The issue of obtaining retirement benefits and unemployment benefits by persons receiving care allowance benefits, and lost the right as a result of events beyond the control of the carers of people with disabilities, is also the subject of analytical work. The Ministry has appointed the Team for System Solutions for Caregivers of People with Disabilities, whose task will be to prepare the relevant legislative changes concerning, in particular, the implementation of the judgements of the Constitutional Tribunal of 21 October 2014 in case K 38/13 and of 18 November 2014 in case SK 7/11. It will be possible to indicate the scope of the planned changes and systemic solutions, and the determine the date of their entry into force after the above works have been completed.

The matter will continue to be monitored by the Commissioner.

[162] Case K 38/13 and SK 7/11.
[163] III.7064.149.2015 of 7 December 2015.
[164] Letter of 13 January 2016.

b) The availability of care allowances for persons providing childcare over disabled children

The Commissioner is receiving complaints from carers of children with disabilities, who have an established right to pensions benefits. These people are not entitled to care allowances. This applies in particular to parents of children with disabilities who have acquired the right to early retirement. The pension benefit of this group of caregivers is significantly lower than the care allowance. The Commissioner is calling for an amendment to the provisions of the Act on Family Benefits in a way that allows to select the more favourable benefit, in the case of concurrence of the right to care allowance and the right to pensions benefits. When determining the conditions for the acquisition of the right to care allowance, the negative condition should apply to early retirement, and not the determination of the right to a pension. The Commissioner requested the Minister of Family, Labour and Social Policy to present a position on the matter[165].

The Minister of Family, Labour and Social Policy announced[166] that the legislative solutions prepared by the previous government relating to, among others, access to care allowances for caregivers of people with disabilities, who have an established right to pensions benefits, have not been implemented due to the expiry of the 7th term of office of the Sejm. Currently, the Ministry is carrying out analyses of possible changes to the shape of the support system for people with disabilities, their families and carers of people with disabilities that could be introduced by the new Parliament.

The matter will continue to be monitored by the Commissioner.

c) Availability of people with disabilities to council flats

In their complaints to the Commissioner for Human Rights, people with disabilities indicate that council flats proposed to them by the communal authorities not only aren't adapted to their needs, but in some cases even prevent day-to-day functioning. The offered apartments are present in buildings without elevators, bathrooms are often located in the hallway or they are not suited for use by people in wheelchairs. In the Commissioner's assessment, the cause of the problem is the lack of provisions that require the commune to take account of the applicant's disability in the adopted resolutions on rental of council flats. The current situation violates the provisions of the Convention on the Rights of Persons with Disabilities and requires legislative changes. The Commissioner requested the Minister of Infrastructure and Construction to provide a position on the matter, and in the event of sharing the arguments contained in the motion, to initiate the relevant legislative works[167].

[165] III.7064.195.2015 of 18 December 2015.
[166] Letter of 1 February 2016.
[167] IV.7217.58.2015 of 14 December 2015.

In his response, the Minister of Infrastructure and Construction asserted[168] that, as part of the works on the draft amendment to the Act on Protection of the Rights of Tenants, Housing Resources of Municipalities and Amendments to the Civil Code[169], the Ministry will analyse the proposition to introduce a provision requiring communes to regulate the matter of proposing flats to people with disabilities and the requirements for these flats in resolutions on the principles of renting flats within the communal housing resource. The Commissioner will continue to monitor the legislative work in this respect.

10. Participation in political and public life (Article 29 of the Convention)

a) Adapting polling stations to the needs of people with disabilities

For many years, the Commissioner has been stressing the importance of proper adaptation of polling stations to the needs of voters with disabilities. Following-up on the previous actions, the employees of the Office of the Commissioner conducted on-site visits to 144 polling stations that had the status of being tailored to the needs of voters with disabilities directly before the presidential elections. Technical conditions of the stations set out in the Ordinance of the Minister of Infrastructure on the Polling Stations of District Electoral Commissions Adapted to the Needs of Voters with Disabilities were the primary subject of evaluation[170].

As a result of the inspection, the employees of the Office of the Commissioner reported shortcomings in 127 stations, which accounted for 88% of all polling stations visited. The stations of the district electoral commissions, contrary to their status, still are not adapted to the needs of voters with disabilities, which significantly reduces the effectiveness of this important guarantee to the principle of universal suffrage. In addition, even best adapted stations in practice prove to be difficult in access for people with disabilities because of architectural barriers in the immediate vicinity of the polling stations. In view of the above, the Commissioner requested the President of the State Electoral Commission to consider the possibility of undertaking measures to ensure the protection of the electoral rights of voters with disabilities[171].

In his response, the President of the State Electoral Commission[172] has asked to provide the heads of local self-government authorities with the motion and the Commissioner's

[168] Letter of 29 December 2015.
[169] Act of 21 June 2001 (Journal of Laws of 2014, item 150, as amended).
[170] Ordinance of 29 July 2011 (Journal of Laws No. 158, item 938).
[171] VII.602.6.2014 of 5 October 2015.
[172] Letter of 12 October 2015.

Report on the visits to polling stations with a view for their adaptation to the needs of voters with disabilities before the presidential election and to indicate the absolute obligation to comply with the requirements of the Ordinance of the Minister of Infrastructure on the Polling Stations of District Electoral Commissions Adapted to the Needs of Voters with Disabilities to the communes' executive authorities.

Also before the elections to the Sejm and Senate, the employees of the Office of the Commissioner conducted inspections of selected stations of district electoral commissions which have the status of being adapted to the needs of voters with disabilities. Deficiencies have been found in the vast majority of controlled premises, such as: the lack of markings on the edges of stairs and glass partitions in place, failure to adapt spaces that ensure the secrecy of the vote, or too high thresholds of doors. In addition, many barriers for people with disabilities existed in the immediate vicinity of the polling stations, including: narrow gates, damaged driveways. The Commissioner requested once more to consider future actions to ensure the protection of the electoral rights of voters with disabilities[173].

The President of the State Electoral Commission informed[174] that – due to the Commissioner's motion – the SEC once again requested the election commissioners to take action to ensure adequate preparation of polling stations adapted to the needs of voters with disabilities by the heads of local self-government authorities. The State Electoral Commission recommended to carry out meetings with commune/town/city mayors and inform them of the obligation to comply with the laws for adapting the polling stations of district electoral commissions to the needs of disabled voters. In the case of communes, where violations in this regard have been reported for years, one should consider informing the supervisory authorities. The SEC obliged electoral commissioners to forward information on the undertaken measures to the Commission by 30 June 2016.

b) Voting rights of incapacitated persons

In his motion to the President of the Republic of Poland, the Commissioner drew attention glaring problem of electoral rights of incapacitated people[175]. In accordance with the provisions of the Constitution of the Republic of Poland, persons incapacitated by a final judgement of the court are deprived of the right to vote and the right to participate in referendums. In practice, after the decision on legal incapacitation, whether total or partial, becomes final the court forwards the notification to the authority keeping the register of voters to strike out the incapacitated person from a given register. This is a technical act, against which no further appeal is possible. Therefore, the Polish election law introduces a presumption that an incapacitated person lacks even a minimum degree of understanding and awareness of the meaning of voting.

[173] VII.602.6.2014 of 10 December 2015.
[174] Letter of 17 December 2015.
[175] VII.602.14.2014 of 7 October 2015.

The OSCE Office for Democratic Institutions and Human Rights noted the issue of the participation of incapacitated persons in the elections in Poland. The report stresses that "in the current legal framework both partially and completely incapacitated persons are robbed of their electoral rights, which violates the judgement of the European Court of Human Rights, as well as international good practices". Similar recommendations flow from the EU Agency for Fundamental Rights report, which clearly highlights the need for substantial changes in the legislation of the Member States of the EU, including Poland, in order to adapt them to the requirements of the Convention on the Rights of Persons with Disabilities.

Due to the fact, that the ongoing work of the Civil Law Codification Committee does not guarantee the effective removal of this condition, the Commissioner approached the President of the Republic of Poland to consider the initiation of the necessary legislative changes, including the possibility to amend the relevant provisions of the Constitution.

III. The Expert Committees' activity

Four Expert Committees operate alongside the Commissioner, including three directly involved in the principle of equal treatment, i.e. the Expert Committee on Elderly People, on People with Disabilities and on Migrants. These are advisory bodies, composed of persons with academic or practical experience, most often resulting from active participation in non-governmental organisations. The tasks of an Expert Committee include substantive support for the activities undertaken by the Commissioner, among others, through proposing priority directions of activity, the preparation of analyses and monitoring the implementation of the principle of equal treatment, particularly with regard to age, disability, nationality, ethnic origin, religion and belief. The Committee's activity is of social nature.

1. The Expert Committee on Elderly Persons

The Expert Committee continued its activities related to the preparation of a community-based support model dedicated to the elderly, taking into account the study developed in 2014 on models of support for elderly people in the local environment in different European countries. In 2015, the focus was on the preparation of a concept of empirical study, which was carried out in the Lower Silesia Province in August and September 2015, whose purpose was to examine the level of implementation of the rules of support, based on human rights in practice, as well as the range of services offered to the elderly. Based on the collected data, a theoretical model of community-based support has been prepared. Its details have been collected in a single study, which will be released in print in 2016. This material will be subjected to further consultation during the regional meetings of the Commissioner, scheduled for 2016. The purpose of the consultations is to popularize community-based support and begin abandoning institutional care for dependent elderly people, as well as to collect comments and notes to the model itself in order to increase its flexibility and suitability for different types of local communities.

In addition, thanks to the involvement of the members of Expert Committee, May 2015 saw the finale of the 1st edition of the *Golden Book of Good Practices for Social Participation of Elderly Persons,* which brings together examples of interesting activities of the local government units and non-governmental organisations, which promote social inclusion of elderly people. The digital version of the publication is available on the Commissioner's website. The project will continue in 2016, together with the preparations for the 2nd edition of the *Golden Book.*

Members of the Committee, in cooperation with the Gdańsk University of Technology, also developed a guide entitled *Przestrzeń publiczna przyjazna seniorom* (*Senior-friendly Public Space*), which was published in 2015.

2. The Expert Committee on People with Disabilities

Priority activities of the Expert Committee on People with Disabilities included the completion of the report *Sprawozdanie Rzecznika Praw Obywatelskich z realizacji przez Polskę postanowień Konwencji o prawach osób niepełnosprawnych w latach 2012-2014* (*Commissioner's Report on Poland's implementation of the obligations arising from the Convention on the Rights of Persons with Disabilities in the years 2012-2014*). The members of the Committee participated actively both in the work on this report, as well as in extensive public consultation. The purpose of the report prepared by the Commissioner was to present the progress and achievements, as well as the most important issues and barriers, in the implementation of the various rights laid down in the Convention from the point of view of an authority, which does not belong to government structures and is not directly responsible for the implementation of obligations arising from the Convention. In addition, the Committee analysed the results of the survey carried out on behalf of the Commissioner entitled *Dostępność edukacji akademickiej dla osób z niepełnosprawnościami* (*Access to academic education for persons with disabilities*). The conclusions from the study were published in print, and the report in the series *Zasada równego traktowania. Prawo i praktyka* (*Principle of equal treatment. Law and practice*) is available on the Commissioner's website. The issue of access of persons with disabilities to justice was also the subject of the Committee's work. This topic was raised in the Commissioner's studies carried out in 2015. The research report will be published in print in 2016.

3. Expert Committee on Migrants

The meetings of the Expert Committee on Migrants discussed issues related to the situation of war victims, the citizens of Ukraine on the territory of the Republic of Poland (in relation with the conflict in Ukraine), refugees coming to Europe from Africa, and the Middle East, as well as repatriates. Members of the Committee also discussed the possible actions to be undertaken by the Commissioner in connection with the current refugee crisis.

In the course of its work, the Committee indicated the need for cooperation between non-governmental organizations and institutions, whose objective is the social integration of migrants, combating their exclusion and discrimination. Occurrences such as the abuse of migrant workers or the promotion attitudes that antagonise ethnic groups were discussed. Also, there has been a debate on how to fight with the recurring image of Poland, as a country reluctant to foreigners.

Members of the Committee also drew attention to the need to carry out an awareness campaign, whose objective will be the widely understood multicultural and anti-discriminatory education. The organisation of workshops for journalists, trainings for politicians

and civil servants who deal with migrants, dissemination of knowledge about refugees in schools and among the public were all called for. There was a proposition to create a platform for cooperation between non-governmental organisations, churches of various denominations and authorities dealing with refugee issues, to change the society's attitude towards refugees and the assistance provided to them.

IV. International activity of the Commissioner for Human Rights in the area of equal treatment

The Commissioner for Human Rights is an active member of EQUINET, the European Network of Equality Bodies, which gathers 45 national bodies for equal treatment from 33 countries. This organization serves as a professional platform for cooperation and mutual support in issues of legal interpretation and practical implementation of European Union directives aimed at tackling discrimination. From 2013, the representative of the Commissioner is serving as a member of a nine-member board of this organisation, and in 2015 – by way of an election – her mandate was extended to the year 2017.

Collaboration with EQUINET allows the Commissioner to continuously improve the knowledge and skills of employees responsible for the realisation of activities related to the principle of equal treatment and non-discrimination. In 2015, the Commissioner's representatives participated in a number of trainings, seminars and conferences, including: Conference *Taking Action for Gender Equality*[176], *Charting the Charter – Equality bodies and fundamental rights in the EU*[177], *Work-Life Balance and Pregnancy and Parenthood related Discrimination*[178], *A question of faith. Religion and belief in the work of equality bodies*[179], *Equality Bodies and the new Freedom of Movement Directive – Challenge or Opportunity?*[180]. The employees of the Office of the Commissioner also actively participate in the works of three of EQUINET's working groups involved in analysing the practical application of anti-discrimination legislation in the Member States (*Working Group on Equality Law),* equal treatment for men and women *(Working Group on Gender Equality),* and communication strategy in the field of equal treatment *(Working Group on Communication Strategies & Practices).*

The challenges associated with the implementation of the principle of equal treatment was also the topic of the 10th seminar of the European Network of Ombudsmen under the title *Ombudsmen against discrimination*[181], co-organised in Warsaw by the Commissioner for Human Rights and the European Ombudsman. The discussion focused, in particular, on the most important problems of modern Europe in areas such as the protection of the rights of older people, people with disabilities and migrants.

The Commissioner also actively cooperates with other organizations and institutions dealing with issues of equal treatment, in particular in the area of preventing and combating crimes motivated by hatred. In 2015, the Commissioner's representatives attended, among others, a seminar organised by the European Commission against Racism and Intolerance of the Council of Europe (ECRI) titled *Addressing underreporting of discrimination and hate crime*[182], as well as participated in the seminar of the Organization for

[176] 23 March 2015.
[177] 16-17 June 2015.
[178] 1-2 July 2015.
[179] 9-10 November 2015.
[180] 9 December 2015.
[181] 27-28 Aptil 2015.
[182] 27-29 May 2015.

Security and Cooperation in Europe (OSCE) under the title *Reinforced Human Dimension Committee on the Issue of Hate Crimes*[183].

The delegation representing the Office of the Commissioner also took part in the international conference titled *Asia-Europe Meeting Conference on Global Ageing and Human Rights of Older Persons*[184], during which the Commissioner expressed support for the development of a new UN convention relating to the protection of the rights of elderly people.

In cooperation with the Ministry of Foreign Affairs, the Commissioner has also organized a seminar for the representatives of human rights bodies in Western Balkan countries, dedicated to the issues of equal treatment of persons with disabilities and the tasks of an independent bodies for the promotion, protection and monitoring of the implementation of the Convention on the Rights of Persons with Disabilities[185].

[183] 17 November 2015.
[184] 27-29 October 2015.
[185] 14-15 September 2015.

V. The activity of other public authorities in the area of equal treatment

1. Selected decisions of national and international courts in the area of equal treatment

On the basis of the provisions of the Act on the Commissioner for Human Rights, the Commissioner's annual report includes information on the observance of the principle of equal treatment in the Republic of Poland. For these reasons, below are presented select decisions of national and international court on this matter, including those that do not directly apply to Poland. It must be borne in mind that the views presented in the decisions of European courts significantly affect the level of protection of the rights of the individual in Poland and constitute an important source of information for the Parliament.

A. Select judgements of national courts

Proceedings to grant international protection

Judgement of the Supreme Court of 4 February 2015 (case III KK 33/14)

There are no grounds for different treatment of persons applying for refugee status, depending on whether the submission occurred immediately after crossing the border, or after placing in a guarded centre for foreigners.

If the foreigner has submitted an application for refugee status only after being placed in the centre, the provision of Article 88(2) of the Act on Granting Protection to Foreigners within the Territory of the Republic of Poland[186] may serve as the basis for their release, in the event of the presumption that the psychological and physical state of the applicant shows that they were subjected to violence in their country of origin, as well as the provision of Article 103 in conjunction with Article 107(1) of the Act on Foreigners[187] if continued stay in the centre could pose a threat to their life or health. Different interpretation of these provisions would lead to discrimination against foreigners and unequal treatment, when utilising non-objective criteria.

State reaction to crimes on grounds of nationality, ethnicity or race

Judgement of the Regional Court in Białystok of 9 November 2015 (case VIII Ka 409/15)

Undoubtedly, the lack of a proper response of the state against the perpetrators of offences based on the grounds of nationality, ethnic origin or race, which in the recent past,

[186] Act of 13 June 2003 (Journal of Laws of 2012, item 680, as amended).
[187] Act of 12 December 2013 (Journal of Laws, item 1650, as amended).

especially in our region, unfortunately, have increased greatly, may be wrongly perceived as an expression of powerlessness on the part of the state authorities, or become a contribution to the further escalation of this type of attitudes (...). For these reasons, only an immediate and effective response of the state towards any manifestations of intolerance, or behaviour questioning the right to unhindered functioning of national minorities within its borders, or behaviours formulating slogans that challenge this right, may result in their significant restriction – if not complete elimination.

Educational measures in cases of incitement to hatred on grounds of race

Judgement of the Regional Court in Warsaw of 30 January 2015 (case II K 279/12)

In order to strengthen the educational impact of the punishment on accused, the obligation to watch the film "Cud purymowy" (The Purim Miracle) was imposed (...), given subject matter, it will make the accused realise, that the history of the Jewish and Polish peoples have been intermingled for many years. Any behaviour demonstrating hatred does not have any justification, which people presenting anti-Semitic attitudes should realize.

In connection with the Regional Court's judgement to limit the personal liberty of the accused persons, who called for racial hatred in a public place, during a football match, the court applied an additional measure that strengthens the educational impact of the penalty. The decision to watch the film was intended to resocialize the accused. Taking into account the young age of some of the accused, a "breach" of the rules for the determination of criminal sanctions and measures was used, justified by the need for great flexibility in terms of shaping the probation period, as the period of influencing the accused in order to prevent them from committing crimes again. The Penal Code does not close the list of measures that may be applied to the accused during the probation period. In the Court's assessment, in terms of individual prevention, the imposed sentence should encourage each of the accused to re-analyse their behaviour and prevent their return to crime, as well as to strengthen the sense of responsibility of the accused for behaviour penalised by the law.

Protection of religious feelings

Judgement of the Constitutional Tribunal of 6 October 2015 (case SK 54/13)

Inherently, an insult against religious feelings only applies to people who profess a certain religion. Indeed, it is difficult to talk about religious feelings of non-believers, whose contempt may be caused by an insulting against a subject or place of worship.

The Constitutional Tribunal found that the challenged Article 196 of the Criminal Code protects freedom of religion, and does not protect freedom of non-religious belief, because only religious feelings are the subject of its protection. Therefore, the penalisation of defamation against religious feelings, referred to in Article 196 of the Criminal Codes, constitutes a restriction of the constitutional freedom of expression (Article 54(1)). However, the substance of this provision is without prejudice to this freedom itself, because the public expression of negative or critical views on a subject of religious devotion is not penalised, unless it assumes such form, and carries objectively defamatory contents. At the same time, it is not possible to assess the constitutionality of the provision in question from the perspective of the alleged violation of the freedom of conscience in the aspect of freedom of secular belief, due to the subject matter under the protection of Article 196 of the Criminal Code, which exclusively includes religious feelings of believers. The Constitutional Tribunal pointed out that freedom of conscience of non-believers is protected by Article 194, 256 and 257 of the Criminal Code, which in turn penalise: limiting individuals' acquired rights due to the lack of religious belief, incitement to hatred on grounds of the lack of religious belief, public insult of a group of population or a single person because of their lack of religious belief.

The right to refuse the provision of health services due to conscientious objection

Judgement of the Constitutional Tribunal of 7 October 2015 (case K 12/14)

Imposing the obligation to indicate the real possibility of obtaining a medical service inconsistent with a physician's conscience constitutes a restriction on the freedom of conscience. The constitutional guarantee of freedom of conscience, in fact, protects the individual not only against the obligation to make a direct assault on the protected good, but also from such undermining of the individual's conscience, which indirectly leads to an ethically unacceptable effect, in particular against coercion to participate in achieving a foul purpose.

The Constitutional Tribunal found that the obligation of performing medical services in urgent cases, and ones that remain incompatible with the physician's conscience and the weight of indicating the possibility of performing the service[188] violates the constitutional freedom of conscience (Article 53(1)) and is not compatible with the principle of proper legislation (Article 2). In the Tribunal's assessment, the solution adopted in the Act is not the appropriate tool to achieve the goal assumed by the legislature, and in any case it is not the optimal tool. A much more effective way to ensure equal and quick access of patients

[188] See. Article 39 in conjunction with Article 30 of the Act of 5 December 1996 on the Physician's and Dentist's Profession (Journal of Laws of 2015, item 464).

to health services, would be the imposition of the notification duty on the "public institutional entities" performing medical activities on behalf of the state.

Employee efficiency assessment and absence related to maternity

Judgement of the Supreme Court of 11 March 2015 (case III PK 115/14)

Unrealistic determination of the responsibilities of a given position by the employer distorts the performance evaluation of the hired person. Such a way juggling data concerning the effectiveness of work on part of the employer has led to the fact that the claimant was in fact punished for long-term absence at work – absence associated with motherhood.

The Supreme Court noted that termination of the employment without reasonable cause, while using biased and discriminatory criteria of selection for the termination, made in relation to a long-term employee covered by special protection on grounds of maternity is not only illegal but also harms the image of the employer.

Determine the scope of the concept of "person remaining in cohabitation"

Decision of the Supreme Court – Penal Chamber of 4 March 2015 (case IV KO 98/14)

(…) in cohabitation remain, beyond the obvious presumption resulting from the institution of marriage, people not bound by marriage, unless they are tied by an emotional, physical and economic bond, as well as those who, by virtue of living together for a long time and adopting a specific model of this life, formed a relationship identical to the closest family relationships referred to in Article 115(11) of the Criminal Code.

The Supreme Court noted that the term "cohabitation", included in the Criminal Code, the Code of Criminal Proceedings[189], the Family and Guardianship Code[190], and other legal acts, is not interpreted uniformly, although the prevailing understanding declares cohabitation as a relationship between two people who remain in a relation characterized by the relations between spouses, even if they are unmarried. In addition, difficulties and non-uniformity in interpretation argue in favour of an individual treatment of each case, but also for the adoption of an intermediate solution, i.e. one, whose concept of cohabitation is not limited to a normally functioning marriage and conjugal relationship, and the related cohabitation of same-sex couples, but which also does not accept that

[189] Act of 6 June 1997 (Journal of Laws No. 89, item 555, as amended).
[190] Act of 25 February 1964 (Journal of Laws of 2015, item 2082, as amended).

the cohabitation takes place whenever a joint habitual residence shall be accompanied by a strong, positive emotional bond.

Using the words "pedał" (fag) and "parówa" (wiener) violates personal rights

Judgement of the Regional Court in Łódź of 22 June 2015 (case I C K 1634/14)

The defendant called the plaintiff a "pedał" (fag) and "parówa" (wiener). (…) The court has is no doubt that expressions used by the defendant when speaking of the plaintiff were disparaging the good name and reputation of the plaintiff. The defendant presented the plaintiff – in vulgar words – as a person with characteristics, which unfortunately are not widely accepted in the Polish society, and especially in small local communities, such as the one, in which the plaintiff lives, they put the person concerned at risk of social exclusion. The defendant, in formulating the above cited statements, has infringed the plaintiff's personal rights.

The District Court for Wrocław-Fabryczna reached similar conclusions in its judgement of 5 June 2015 (case XII K 458/14), who considered using the words "pedał" (fag) and "zboczeniec" (pervert) to be defamatory.

Discrimination by association and seeking redress for a breach of the principle of equal treatment

Judgement of the Regional Court in Warsaw of 18 November 2015 (case V Ca 3611/14)

Compensation from Article 13 of the Act on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment does not distinguish between compensation for tangible and intangible damage.

The court of second instance confirmed that in this case there had been an instance of discrimination on the basis of sexual orientation by association, which consists of connecting a given person – due to subjective views – to a discriminated group. The Regional Court did not concur with the assessment of the Court of first instance, according to whom Article 13 of the Act on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment provides for the possibility of seeking both redress and compensation. In the assessment of the Court, if the legislature wanted to distinguish responsibility for tangible damage and harm in the implementation act, it would have distinguished it in the content of the provision itself. The Court notes furthermore that the termination of a contract of mandate on the basis of a conviction on the sexual orientation of the contractor undoubtedly qualifies as unlawful and infringing to personal rights.

Issuing a certificate proving full eligibility to enter marriage abroad in accordance with the Polish law

Decision of the Regional Court in Warsaw of 9 October 2015 (case VI Ca 435/15)

The Head of the Registry Office is obliged, in each case, to examine the specific circumstances of the case, i.e. whether a given person can enter into marriage with another specific person in accordance with the Polish law, and this certificate is not only to determine whether a person is in general able to marry.

The applicant applied to the Head of the Registry Office for a certificate on the eligibility to enter into marriage in order to enter into a same-sex marriage in another state. The Head of the Registry Office refused on the grounds that such marriage cannot be contracted in accordance with the Polish law. The applicant complained to the District Court, which concluded that the refusal to issue the certificate was based on reasonable grounds.

While examining the appeal, the Regional Court concluded that issuing the certificate is not possible due to Article 18 of the Constitution of Poland[191]. In addition, the court considered that such a decision would violate Article 7 of the law on International Private Law[192]. The court also considered the allegation of infringement of the European Convention for Human Rights and the law of the European Union, among others, Article 9 of the European Union Charter of Fundamental Rights to be unfounded – indicating that it does not refer to the conditions and mode of contracting marriages and considers national regulations to be appropriate in this regard.

The condition of age, and serving as a prosecutor

Judgement of the Supreme Court of 15 July 2015 (case III PO 6/15)

It is established in the case-law of the Supreme Court, that the generational exchange of prosecutors constitutes a premise which the Public Prosecutor General may take into account when assessing the merits of the Prosecutor's request for consent to further hold the position. The Supreme Court cannot interfere with the statutory powers of the Public Prosecutor General and assess, whether the concerned prosecutor can continue to perform his function. The Supreme Court shall only examine whether the decision of the Public Prosecutor General is not arbitrary or made using prohibited criteria.

[191] Article 18 states: Marriage, being a union of a man and a woman, as well as the family, motherhood and parenthood, shall be placed under the protection and care of the Republic of Poland.

[192] Article 7 of the Act of 4 February 2011 (Journal of Laws of 2015, item 1792) states: Foreign law shall not apply, should the effects of its application be contrary to the fundamental principles of the legal system of the Republic of Poland.

The plaintiff brought an appeal against the decision of the Public Prosecutor General, who had not agreed for her to continue on her position as prosecutor after reaching the age of 65. The plaintiff argued that the decision was arbitrary, unjust and constituted a manifestation of discrimination on grounds of age. The Supreme Court considered an adequate "generational replacement" is an acceptable condition, also recognised in the case-law of the ECJ[193].

The conditions for legal incapacitation

Judgement of the Court of Appeals in Katowice of 11 September 2015 (case V ACa 109/15)

Legal incapacitation, which in principle is to serve as help provided by the state to disabled persons, including people with intellectual disabilities, relies on a profound interference with their rights guaranteed both by the Constitution and the international agreements that bind the Republic of Poland (...). For this reason, incapacitation should constitute the ultima ratio and therefore the remedy used only if it is not possible to secure the interests of a person unable to guide their own conduct in any other way.

The court dismissed the request of the public prosecutor to legally incapacitate a person on grounds of intellectual disability. The court held that, despite the existence of the conditions of Article 13(1) of the Civil Code[194] which provides for the possibility of total incapacitation, one has to consider that the life situation of the person concerned is stabilized, they possess factual support and there is no need to ensure their legal protection. A decision on legal incapacitation could lead to impairing the beneficial legal situation of the concerned. The court noted that incapacitation, by leaving the entire realm of decision-making in the hands of the court-appointed guardian, significantly reduces the capability of people with disabilities to function and to make choices relating to every aspect of their functioning in social or personal life on an equal footing with others. The court also referred to Article 30 of the Constitution of the Republic of Poland and the provisions of international law on the protection of human rights, i.e. the Convention on the Rights of Persons with Disabilities and the Convention for the Protection of Human Rights and Fundamental Freedoms, pointing out that the protection of dignity and the right to privacy are infringed by each decision on incapacitation, which does not lead to a significant improvement of the legal or factual situation of the incapacitated person.

[193] Cf. for example, cases C-159/10 and C-160/10.

[194] Act of 23 April 1964 (Journal of Laws of 2014, item 121, as amended).

The ability to grant power of attorney to represent in court proceedings by people with mental disorders

Resolution of the Supreme Court of 25 February 2015 (case III CZP 102/14)

A person with mental disorders capable of being a party in court proceedings can grant power of attorney.

The Supreme Court had to rule on the following question of law: "Does the health condition of a party diagnosed with mental illness and mental impairment warrants an ex officio examination by the court of the possible annulment of the statements made by said party concerning the appointment of a legal representative, resulting in an invalidity of the proceedings due to improper authorization of the representative (Article 379(2) of the Code of Civil Procedure)?"

The Supreme Court decided that a person with mental disability or mental impairment, provided they are of legal age and not incapacitated, may grant power of attorney, because they maintain complete ability to be a party to legal proceedings. The Supreme Court pointed out that in accordance with the Convention on the Rights of Persons with Disabilities, discrimination against anyone on grounds of disability constitutes a violation of the inherent dignity and value of the human being. The parties to the Convention are required to provide people with disabilities with effective access to justice on an equal basis with others, including the adjustment of procedural regulations in order to facilitate effective participation therein, directly or indirectly.

The conditions for placing in a psychiatric institution as a preventive measure

Decision of the Supreme Court of 10 November 2015 (case IV KK 254/15)

No one shall be deprived of their liberty by way of a preventive measure without prior determination of the perpetration of the act which satisfies the criteria of a crime characterized by major social danger and the fear that the perpetrator – in connection with the underlying disease – may commit the act again. (...) The way aiming to legally protect the mentally ill from only a potential threat that they may pose to themselves or their surroundings due to mental disorders is entirely different.

The District Court discontinued the criminal proceedings on using unlawful threats and decided to place the mentally ill person in a psychiatric institution as a preventive measure. The accusation concerned the acts from Article 190(1) of the Criminal Code, punishable by fine, restriction of liberty or imprisonment for up to two years, while the involuntary civil confinement in connection with this actions lasted from December 2004.

The Supreme Court annulled the decision to place the suspect in a psychiatric institution, as issued in a flagrant violation of the law on ensuring basic rights to the suspect.

Mental illness can in some situations constitute a risk to life and health of the patient and their surroundings, but the *sine qua non* condition of depriving them of liberty and involuntary confinement in a psychiatric hospital as a preventive measure is to hold fair criminal proceedings in which not only the fact of committing the offence that could serve as the basis for detention is established beyond any reasonable doubt, but also other, legal and medical aspects of the judgement.

b) Select judgements of international courts[195]

Examination of social integration as a condition for obtaining a long-term residence permit

Judgement of the Court of Justice of the European Union of 4 June 2015 in case C-579/13

The CJEU ruled in the case of P. and S. – third country nationals holding a long-term residence permit in the Netherlands, issued on the basis of Directive 2003/109/EC Concerning the Status of Third-country Nationals who are Long-term Residents[196]. In accordance with national law, they should take an exam of civic integration and demonstrate knowledge of spoken and written language, as well as sufficient knowledge of the Dutch society, under pain of a fine, which is increased in case of failure to take the examination within the prescribed period. The CJEU ruled that the Directive does not preclude the application of an obligation to take an examination on civic integration by Member States, and the detailed rules for implementing this obligation cannot compromise the purpose of the Directive – therefore one should have regard to, among others, the availability of courses and materials needed to prepare for the exam, the fee or age, illiteracy, the education level of the examinees. With regard to the principle of equal treatment, the Court held that it is not possible to compare the situation of third-country nationals to the situation of the nationals of a Member State – thereby, mandating civic integration of third-country nationals does not constitute discrimination against the nationals of a Member State.

Examination of civic integration as a condition for family reunification

Judgement of the Court of Justice of the European Union of 9 July 2015 in case C-153/14

Directive 2003/86/EC on the Right to Family Reunification[197] refers to the conditions for exercising the right to family reunification by third-country nationals residing in the territory of Member States. In the Netherlands, the right to family reunification is subject

[195] The compilation includes selected judgements of the European Court of Human Rights and the Court of Justice of the European Union in a chronological order (i.e. according to the date of issue).

[196] Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ L 16, 23.1.2004, p. 44).

[197] Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ L 251, p. 12).

to examination on civic integration. The applicants – a citizen of Azerbaijan and a citizen of Nigeria – invoked health problems and mental disorders that prevent them from taking the exam, however, they were not exempt from the obligation to take it. The CJEU emphasized that integration measures themselves are not contrary to the objectives of the directive, but they should not to organise a selection, but to facilitate the integration of people exercising their right to family reunification. Dutch legislation does not allow for an exemption from the exam in all cases, which make the right to family reunification impossible or excessively difficult. In addition, the cost of materials to prepare for the exam and the cost of the exam may constitute an undue obstacle to family reunification.

Discrimination against national minorities in the enjoyment of the right to be elected

The judgement of the European Court of Human Rights of April 21, 2015, Application No. 16632/09 (Danis and Association of Ethnic Turks v. Romania)

The Court found that the new Romanian electoral law, by introducing different statutory rules for minority organisations shortly before the election, made it difficult for the applicant to stand in the election as candidate on behalf of the party representing the national minority, thereby breaching Article 14 (prohibition of discrimination) and Article 3 of Protocol No. 1 to the Convention (right to free elections). The two-track system for nominating candidates being discriminatory to the party, which, due to the lack of representatives in the parliament had to meet additional requirements, was the basis of the violation of Article 14. The Court noted that the adopted law remains against the rules of democracy and citizens' trust in public authorities.

Discrimination against Roma people by an energy company

Judgement of the Court of Justice of the European Union of 16 July 2015 in case C-83/14

The applicant ran a shop in a district of one of the Bulgarian towns inhabited mainly by people of Roma origin. In this district, an energy company installed electricity meters on concrete pillars at a height of 6-7 meters – in other districts of the city, less populated by people of Roma origin, the meters are located at a height of 1.70 m, directly at the customers' premises, on external walls of buildings, on fences. The company justified installation at such height in the Roma neighbourhood by tampering with the meters, recurring damage and illegal grid connections in this district. Although the applicant herself is not a person of Roma origin, the CJEU held that the principle of equal treatment applies not only to people of a certain ethnic origin, but also to people who suffer unequal treatment together with a specific ethnic group. The CJEU pointed out that a Bulgarian court should assess whether the practice of the energy company takes place only in the districts mainly inhabited by Bulgarian citizens of Roma origin or is it permanent, generalized and imposed – if this practice is based on stereotypes and prejudices based on ethnicity,

we're dealing with direct discrimination due to its derogatory and stigmatizing nature and extreme difficulty of checking the meter in order to control energy consumption on part of the residents. Even if this practice is not considered to be direct discrimination by a Bulgarian court, the Court considers that it may constitute indirect discrimination. The Court also held that the concept of "particular disadvantage" within the meaning of Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin does not mean a particularly important, obvious or severe case of inequality, but it means that it is especially persons of a particular racial or ethnic origin who are at a disadvantage due to the disputed provision, criterion or practice.

Violence motivated by prejudice on the part of public officials

Judgement of the European Court of Human Rights of April 21, 2015, Application No. 29414/09 and 44841/09 (Ciorcan and others v. Romania)

The case concerned 37 applicants who alleged disproportionate use of force by public officials against the Roma community, which posed a risk to the life of the participants of the incident and ill-treatment in violation of Article 2 (Right to life), Article 3 (Prohibition of torture) and Article 14 (Prohibition of discrimination) of the Convention, due to the fact that, in the opinion of the applicants, the intervention was caused by discrimination against persons of Roma origin. The Court held that Romania violated the rights of its citizens, who were injured during the incidents with the Police, and it did not fulfil the obligation to carry out a fair investigation – therefore, there has been a violation of all rights raised by the applicants.

Restriction of freedom of artistic expression of anti-Semitic nature

Decision of the European Court of Human Rights of 20 October 2015, inadmissibility decision, Application No. 25239/13 (M'Bala v. France)

Complaint was filed before the Court by a comedian and political activist who had been sentenced by a French court for publicly insulting a group of people regarding their Jewish origin. The comedian invited an academic, repeatedly convicted for disseminating negationist and revisionist opinions, including questioning the existence of gas chambers in concentration camps, to participate in a performance. The domestic court justified the applicant's conviction by the fact that even caricature and satire in a democratic society is not always within the bounds of freedom of speech and artistic expression, which both have their limitations. The Court found such a statement as being directed against the values underlying the Convention and recalled that any such evaluation must be considered in the light of its context and the circumstances of its delivery. A hateful and anti-Semitic opinion, even if delivered in the form of artistic expression, is just as dangerous as a direct attack and therefore does not deserve the protection of Article 10 of the Convention.

Responsibility of a website for hateful comments

Judgment of the European Court of Human Rights – Grand Chamber Judgement of 15 July 2015, Application No. 64569/09 (Delfi AS v. Estonia)

Delfi AS is a company running one of the largest on-line news portals in Estonia. In 2006, it published an article on changes to the ferry schedule between some of the islands. There were offensive and threatening entries directed at the operator and owner of the ferry in the comments below the article. The owner sued Delfi – the domestic court held the portal responsible for the content of comments beneath the article. Delfi, in its complaint to the Court, questioned the responsibility for the comments and accused the domestic courts of a violation of freedom of speech guaranteed by Article 10 of the Convention. The Court found that the steps taken by Delfi with the intent to protect the right to respect for privacy and family life of the applicant were insufficient. In this situation, the Court considered it reasonable and proportionate to limit the company's right to freedom of expression and – as a professional entity – hold it responsible for defamatory comments.

The freedom to manifest religion by a hospital employee

Judgement of the European Court of Human Rights of 26 November 2015, Application No. 64846/11 (Ebrahimian v. France)

The case concerned an employees of a French public hospital, which hid her face at work with a yashmak. The hospital did not renew the applicant's contract because of complaints made by patients. The Court did not accede to the applicant's position that there has been a violation of the freedom of thought, conscience and religion guaranteed to her by Article 10 of the Convention due to the principle of ideological and religious neutrality of officials and public servants expressed in the French constitution. According to the already established case-law of the Court, the freedom to manifest one's religion is not unlimited, and in this case the principle of neutrality of the public service also serves the equal treatment of patients.

The right to parental leave for the father, whose wife is unemployed

Judgement of the Court of Justice of the European Union of 16 July 2015 in case C-222/14

In accordance with the Greek law, an officer of the civil service is not entitled to parental leave if his wife does not work or does not perform any occupation, unless she is deemed unable to meet the needs associated with raising a child due to a serious illness or disability. The Court has confirmed that parental leave is an individual right that cannot be dependent on the situation of the spouse – it would be contrary both to the requirements of the EU law regarding parental leave[198], as well as the provisions on the prohibition

[198] Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, OJ L 145, p. 4 – Polish Special Edition, Chapter 5, vol. 2, p. 285, as amended

of discrimination in employment. Moreover, the CJEU pointed out that in Greece mothers employed as public officials are always entitled to parental leave, while fathers may use it only in situations where the child's mother works or performs other professional activities. In practice, Greek legislation shaped in such a way does not ensure full equality between men and women in employment and may perpetuate the traditional division of roles between men and women, supporting the auxiliary role of men in relation to the women's role in the exercise of parental duties.

Partnerships between persons of the same sex

Judgement of the European Court of Human Rights of 21 July 2015, Complaints No. 18766/11 and 36030/11 (Oliari and others v. Italy)

The Court considered the very fact of a lack of regulations concerning the situation of same-sex couples, in connection with the achievement of the European consensus on the institutionalization of same-sex relationships, to constitute a violation of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The Court also considered that positive obligations of the state arise from Article 8 of the Convention, and the freedom in their implementation is not unlimited in cases where a particularly important aspect of life and individual identity plays a role. Reflecting the actual situation of the applicants – i.e. remaining in a same-sex relationship – constitutes no burden to the state and serves an important social need. The interest of the applicants demanding legal recognition and protection of their single-sex relationships does not affect the public interest in any way.

Blood donation by homosexual men

Judgement of the Court of Justice of the European Union of 30 April 2015 in case C-528/13

The CJEU ruled that permanent deferral from blood donation on men who have sex with men (MSM) may be justified, depending on the situation in a given Member State. The case considered by the CJEU concerned the situation in France, so that by when analysing the degree of risk of acquiring severe infectious diseases by MSM, the epidemiological situation in the country becomes the subject of assessment. According to the data presented to the CJEU, in France there is the highest level of HIV infections within the MSM group among all countries of Europe and Central Asia. The CJEU also stressed that domestic courts should also examine whether there are less restrictive methods – than a permanent deferral on such donors – which would ensure the safety of recipients, in particular,

by Council Directive 97/75/EC of 15 December 1997 (OJ of 1998, L 10, p. 24 – Polish Special Edition, Chapter 5, vol. 3, p. 263).

whether a questionnaire and a personal interview with a qualified health care professional, enabling the identification risky sexual behaviour should not be considered such a method.

The obligation to sterilise transgender people

Judgment of the European Court of Human Rights of 10 March 2015, Application No. 14793/08 (Y.Y. v. Turkey)

The Court considered the refusal of gender reassignment surgery to a transsexual person solely because the applicant had not been permanently incapable of procreation, which is a prerequisite for a court-issued consent to undergo this type of medical treatment in Turkey to constitute an infringement of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (right to respect for privacy and family life).

Failure to ensure the safety and security of the participants of a march for equality

Judgment of the European Court of Human Rights of 12 May 2015, Application No. 73235/12 (Identoba and others v. Georgia)

The case concerned a peaceful march organized in 2012 in Tbilisi on the occasion of the International Day Against Homophobia, which was brutally interrupted by a counter-demonstration. Despite the requests to the authorities to provide protection, the participants of the demonstration – in the face of the police officers' inaction – suffered from insults and violent attacks committed by the counter-demonstrators. The applicant organization alleged infringement of Article 3 of the Convention (prohibition of torture) in conjunction with Article 14 (prohibition of discrimination) and Article 11 (freedom of assembly). The Court agreed with the allegations of the applicants, recognizing the nature of the attacks on the demonstrators to be clearly discriminatory, in addition to pointing out the obligation of the authorities to undertake all measures to ensure peaceful conduct of the planned march and the provision of an adequate number of police officers for its protection, bearing in mind that the authorities were informed of the demonstration. According to Georgian law, discrimination based on sexual orientation is a factor exacerbating criminal liability for the offence – meanwhile a fair investigation has not been carried out. The Court has once more emphasized that the state has an obligation to ensure the right to peaceful assembly and, what goes with it, to protect the demonstrators of peaceful assemblies against any attacks.

Benefits for people with disabilities who are not nationals of a particular state

Judgement of the Court of Justice of the European Union of 16 September 2015 in case C-433/13 and Case C 361/13

Refusal to grant care allowance and allowance for the compensation of additional costs to people with severe degrees of disability who are not Slovak nationals constitutes

a violation of Article 7 and Article 21 of the Regulation of the European Parliament and of the Council (EC) on the Coordination of Social Security Systems[199].

Access to social assistance benefits for citizens of EU Member States seeking employment

Judgement of the Court of Justice of the European Union of 15 September 2015 in case C-67/14

In accordance with German law, foreigners coming to Germany only in order to seek employment or obtain social assistance are excluded from eligibility for benefits from the German social welfare system. In the evaluation of the CJEU, such an exclusion of certain special non-contributory cash benefits is acceptable and compatible with the EU law and does not violate the principle of equal treatment. When applying for such welfare benefits, EU citizens can demand equal treatment with nationals of the host country only if they satisfy the requirements referred to in the Directive on the right of EU citizens and their families to move and reside freely within the territory of the Member States[200]. In accordance with the principle of equal treatment, EU citizens are entitled to benefits, if they were entitled to stay as an employee and remain unintentionally unemployed. After working for less than a year and having registered as unemployed – they are entitled to worker status for a period of six months. A Member State may refuse to grant benefits to EU citizens, who have not worked at all or if the period of six months elapsed, although it is forbidden to expel the job seeker from the Member State as long as they can prove that they continue to seek employment and have a genuine chance of being hired. Always, however, the individual situation of the EU citizen must be assessed.

Detention of people infected with HIV

Judgment of the European Court of Human Rights of 9 July 2015, Application No. 20378/13 (Martzaklis and others v. Greece)

The case concerned the conditions of detention of people infected with HIV residing in a Greek psychiatric hospital. The applicants alleged, inter alia, that the necessity of staying in a separate hospital wing leads to ghettoization, and the conditions in which they are imprisoned are inhuman and degrading – they reside in overcrowded cells with inadequate heating and ventilation, and in poor overall hygienic conditions. The applicants also did not have the possibility to use any remedy provided for in the domestic law that would have

[199] Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, p. 1), as amended by Regulation (EC) No. 988/2009 of the European Parliament and of the Council of 16 September 2009 (OJ L 284, p. 43).

[200] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJ L 158, p. 77 – Polish Special Edition, Chapter 5, vol. 5, p. 46; Corrigendum: OJ L 229, p. 35; OJ L 197 of 2005, p. 34).

enabled them to challenge the conditions of detention and treatment. The Court found a violation of Article 3 (prohibition of torture), Article 14 (prohibition of discrimination) and Article 13 (right to an effective remedy) of the Convention for the Protection of Human Rights and Fundamental Freedoms.

2. Selected checks, tests and other activities undertaken by public authorities in the area of equal treatment

In order to develop a comprehensive report on the observance of the principle of equal treatment in the Republic of Poland, the Commissioner approached selected public institutions with regard to the activities undertaken by them to implement the principle of equal treatment, as well as the main conclusions and the problems perceived in this area in 2015[201]. Below is a short summary of the answers obtained, together with a particular emphasis on problems of general and systemic nature.

a) The principle of equal treatment and foreigners

The observance of the principle of equal treatment in relation to foreigners is present in the activity of the Commissioner for Human Rights and other public entities such as: the Office for Foreigners, Border Guard and the National Labour Inspectorate.

In 2015, similar to the previous years, the Office for Foreigners[202] participated in the implementation of the *Porozumienie w sprawie standardowych procedur postępowania w zakresie rozpoznawania, przeciwdziałania oraz reagowania na przypadki przemocy seksualnej lub przemocy związanej z płcią wobec cudzoziemców przebywających w ośrodkach dla osób ubiegających się o nadanie statusu uchodźcy* (Agreement on the standard procedures in identifying, combating and reacting to sexual violence or gender-based violence in

[201] XI.071.1.2015 of 21 December 2015 Motions were referred to: Office of the Government Plenipotentiary for Equal Treatment, Inspector General for the Protection of Personal Data, the Central Statistical Office, Polish National Police Headquarters, Headquarters of the Border Guard, the Financial Supervision Authority, the National Council of Radio Broadcasting and Television, the National Council of the Judiciary, the Supreme Administrative Court, the Supreme Audit Office, the National Labour Inspection, the Financial Ombudsman, the Graduate Rights Ombudsman, the Ombudsman for Children, the Patients' Rights Ombudsman,the Supreme Court, the Constitutional Tribunal, the Office for Foreigners, the Office of Electronic Communications, the Office of Competition and Consumer Protection, the Office for Energy Regulation, the Polish Bank Association. As a result of the reorganisation of the office, the Office of the Government Plenipotentiary for Equal Treatment did not provide a response.

[202] Letter of 19 January 2016.

relation to prisoners staying in centres for persons applying for refugee status). In addition, from March 2014 to November 2015, the Office co-implemented (together with the Polish Migration Forum Foundation and the Foundation for Somalia) the project titled "From tolerance to integration", which aimed to create good inter-cultural relations in towns with refugee centres, contribute towards openness, overcome mutual stereotypes and combat discrimination, racism and xenophobia. In addition, in 2015 the Office did not receive any complaints on discrimination or the lack of implementation of the principle of equal treatment.

In turn, the Commander-in-Chief of the Border Guard[203] received two complaints submitted by Ukrainian nationals, which contained the allegations of unequal treatment with regard to the actions of the Border Guard's field units. Both applicants alleged a violation of the law during the examination of complaints filed earlier concerning the manner of handling an application for refugee status in the territory of Poland (lack of reference to the alleged inconsistency between the application for refugee status and information provided by the foreigners to this end) and discrimination based on national origin. The findings in this regard have shown that the notification on examining the complaint by the downstream authority did not include a direct reference to the applicant's allegation concerning the inconsistency between the application and the provided answers, and the complaint was found justified in this regard.

Aside from that, the Chiefs of Border Guard Units received three complaints, which contained the allegation of an infringement of the principle of equal treatment during the performance of officers' duties related to racial profiling during an airport check-up. The subsequent three complaints alleged unequal treatment during border control at the border crossings with Ukraine and Belarus. The complaints pertained to the accusation of discrimination on grounds of origin and violation of dignity in the form of insults and abusive remarks towards foreigners; the allegation of an unlawful and brutal detention on grounds of origin, resulting in a face injury of the detained and preventing them from contacting the consul; the accusation of preventing from crossing the border due to Dutch residence permit on grounds of origin.

Another area of observance of the principle of equal treatment with respect of foreigners include work and employment conditions prevailing on the Polish labour market. As part of the "Audit on employment, other forms of work and performance of work by foreigners" carried out in 2015 by the National Labour Inspectorate, labour inspectors controlled the observance of the principle of equal treatment of foreigners with regard to work conditions and other employment conditions in comparison with Polish citizens[204]. This issue was controlled during 811 audits involving 4,616 foreigners. Misconducts have been found in 2 audited entities. The concerns raised pertained to 30 foreigners working for them. As in the previous years, unequal treatment of foreigners in comparison to Polish citizens most

[203] Letter of 20 January 2016.
[204] Letter of 9 February 2016.

often resulted from less favourable contracts offered to foreigners (e.g. civil law contracts instead of employment contracts), lower wages for the same work or the utilisation of other, unfavourable work organisation systems.

b) Hate crimes – hate speech

As previously indicated, the issue of combating discrimination on grounds of racial, ethnic or national origin to a large extent applies to hate crimes, including the so-called hate speech. At the initiative of the Criminal Service Bureau of the General Police Headquarters[205], persons have been designated to support the fight against crime based on racial hate and xenophobia in all Police units in the country. Coordinators from the Provincial Headquarters / Warsaw Police Headquarters to send monthly reports on hate crimes occurring in their area to the General Police Headquarters. These data are analysed and serve as a basis for the implementation of new solutions designed to increase the efficiency of the fight against crimes with racist and xenophobic motivations. The above analyses are also used to assess the training needs of officers dealing with this issue.

In addition, the Cybercrime Division CSB GPH conducts ongoing monitoring of the Internet with regard to identifying "hate speech" posted on discussion forums and websites, which could satisfy the conditions of offences typified in the Articles 256, 257 and 119 of the Criminal Code. From 1 October 2014, units to fight cybercrime have been established in all Provincial Police Headquarters, which also deal with the monitoring of hate speech.

In addition, new features involving the cataloguing of hate crimes have been introduced to the Electronic Register of Investigative Activities. Form 11/6 was developed, concerning instituted and concluded pre-trial proceedings pertaining to hate crimes in the Police Electronic Reporting System. From 7 December 2015, the web app of the National Police Information System has been updated with information that characterise hate crime.

In 2015, the Police organisational units throughout the country instituted 954 pre-trial investigations of offences committed with racist and xenophobic motivation. Over the course of pre-trial proceedings concerning hate crimes within this period, a total of 330 victims – including 249 men and 81 women – have been identified. The most common behaviour of perpetrators in the case of hate crimes included:

- posting comments on the Internet,
- writing inscriptions or drawing symbols,
- insulting the victim in direct contact,
- making threats against the victims,
- shouts, gestures, presenting flags or banners,
- the use of violence against the victims.

[205] Letter of 20 January 2016.

As to the increased percentage of cases of hate crimes in relation to the total number of cases of this kind, it should be stated that the increasing numbers of preparatory proceedings in which it is established that the acts covered by them have been motivated by hatred are affected by:

- raising general awareness, both among the citizens of Polish origin who report this kind of behaviour towards the representatives of different kinds of minorities, as well as greater awareness of the victims themselves, thanks to an undoubted contribution of actions and information campaigns (e.g. "Rasizm. Walczę nie milczę" run by the Ministry of the Interior);
- conducting training as part of professional development of police officers, which resulted in raising the awareness among officers dealing with cases of attacks on persons representing minorities under the preparatory proceedings and operational investigations carried out by them, and thanks to which acts committed to the detriment of representatives of various kinds of minorities, even against their property, are recognized as acts motivated by hatred, and thus monitored in greater depth monitored by the superiors and the public prosecutor's office;
- insightful determining of the offender's motive, which allows to classify an act as motivated by hatred, and thus directly translates into the number of proceedings in this respect;
- frequent police action and citizen notifications on the identification of all cases of violations of the law that are motivated by hatred, especially in the form of inscriptions and symbols written on walls and the so-called hate speech on the Internet.

c) The right to equal treatment of parents

Many cases relating to the limitation of children's contact with the parent not residing with them are received by the Office of the Ombudsman for Children[206]. Each case is considered individually, taking into account the best interests of the child and their family. It should be emphasized that disputes related to the contacts and place of residence of the child, by their nature are particularly sensitive to all interested parties, and ensuring the enforcement of the court's decision in this respect is often difficult, due to the behaviour of one or both parents, mutual animosity and the lack of willingness to cooperate.

The Ombudsman for Children also received notifications about the problem of discrimination against fathers in regard to the right to determine the origin of the child. The issues primarily pointed out includes the lack of fathers' individual right to challenge the paternity of the mother's husband or the person who acknowledged the child in front of the registrar. Moreover, it was pointed out that in matters concerning the child's origin, there is no obligation to undergo genetic testing, which is most commonly used by defendants

[206] Letter of 25 January 2016.

in cases for the determination and denial of paternity. Meanwhile, in such cases DNA testing often provides the only evidence allowing to determine the origin of the child. The Ombudsman for Children approached the Minister of Justice[207] to undertake legislative measures aimed at creating a legal basis to carry out DNA testing in cases concerning the origin of children, in justified cases without the required consent of the person concerned, or the person exercising parental authority, if it remains in the best interests of the child.

In addition, with the aim of striving to enable parents' joint custody over the children, the Family Law Codification Committee acting alongside the Ombudsman for Children's prepared a draft law amending the Law – Family and Guardianship Code and the Act – the Code of Civil Procedure, which was passed to the Senate Commissions with a request to give legislative effect to the draft. As a result of the undertaken parliamentary works, among others, the provisions of Article 58 and 107 of the Family and Guardianship Code have been amended[208]. In accordance with the new wording of these provisions, even in the absence of agreement between parents, the court is no longer obliged to entrust custody to one parent and limit the parental authority of the other. The court, bearing in mind the best interests of the child, should first and foremost consider granting both parents full parental rights as the decision, which in principle provides the child with the best possibility of being raised by parents and maintain contact with them.

d) Domestic violence – Blue Card

According to information provided by the Plenipotentiary for Human Rights of the Commander-in-Chief of the Police[209], in 2015 Police officers filed 75,479 "Niebieska Karta-A" forms (Blue Card-A). This means a decrease of 2.99% in terms of the "Blue Card-A" forms submitted by Police officers in comparison with 2014. In 2015, 97,472 persons assumed to be affected by domestic violence have been identified (a decrease of 4.71% compared to 2014), including 69,358 women (up to 65 years of age – 63,226, over 65 years of age – 6,132), 10,732 men (up to 65 years of age – 9,270, over 65 years of age – 1,462) and 17,382 minors (girls – 8,715, boys – 8,667).

There are 76,016 persons suspected of causing domestic violence – on the basis of the "Blue Card-A" forms filed by the Police (decrease of 3.15% compared to 2014), of which 5,243 are women, 70,469 – men, and 306 are minors (79 girls and 227 boys). Of all the persons against whom there is a suspicion of committing domestic violence, 15,540 have been arrested by the police on the basis of Article 244 of the Criminal Code or Article 15a of the Act on Police (an increase of 11.62% in comparison to 2014), of which 465 are women, 15.034 – men, and 41 minors (12 girls, 29 boys).

[207] Letter of 23 October 2015.
[208] Cf. Act of 25 June 2015, amending the act – Family and Guardianship Code and the act – Code of Civil Procedure (Journal of Laws of 2015, item 1062).
[209] Letter of 20 January 2016.

e) Discrimination based on sex in the insurance business

An important issue in the field of observance of the principle of equal treatment includes the practices of taking into account gender or the fact of pregnancy and motherhood in the insurance of certain entities, indicated by the Financial Ombudsman[210]. The Financial Ombudsman, in the framework of undertaken intervention activities in handling individual complaints submitted by consumers, as well as in connection with the analysis of general insurance conditions of the insurance contracts concluded with consumers, is doubtful as to the compatibility of practices utilised by some insurance companies to shape the responsibilities and its exclusions based on sex, as well as with respect to insured events related to pregnancy or not directly related to pregnancy, but relating to pregnant women with Article 18a and 18b of the Law on Insurance Business[211].

The Financial Ombudsman analysed the provisions of the selected model contracts, in which he saw the practice of excluding the insurers' responsibility, when the insurance event, consisting mostly in hospitalization, surgery related to pregnancy, childbirth and afterbirth, are excluded from coverage. The Ombudsman noted the use of exemptions of responsibility for events related to pregnancy, childbirth or afterbirth, which leads to evasion of responsibility for any hospital treatment or hospitalization that takes place during pregnancy, regardless of whether they remain in adequate causal connection to it, or whether this relationship is purely circumstantial.

The Financial Ombudsman informed the Head of the Office for Competition and Consumer Protection and the Government Plenipotentiary for Equal Treatment[212] of his findings. In response, the OCCP approached the President of the Polish Chamber of Insurance with a request to prepare and implement a systemic solution that would allow for the elimination of discrimination of women in relation to the events related to pregnancy or relating to pregnant women. In the opinion of the OCCP, these actions are essential for the entire market to operate in line with the standards set by EU legislation and the provisions of Polish law.

f) Access of the elderly and people with disabilities to goods and financial services

Equal access to goods and financial services remains in the area of interest of the Commissioner for Human Rights. However, problems in this area are also reported to other

[210] Letter of 21 January 2016.

[211] Act of 22 May 2003 (Journal of Laws of 2013, item 950, as amended); the legislature preserved these provisions in the currently applicable Article 34 of the Act of 11 September 2015 on Insurance and Reinsurance Activity (Journal of Laws, item 1844).

[212] Letters of 27 May 2015.

entities such as, among others, the Office of Competition and Consumer Protection, the Polish Bank Association and the Financial Supervision Authority.

In 2015, the Polish Bank Association received reports of problems that people with sight impairments have due to updated visuals of bank websites. As a result of the undertaken measures, the reported inconveniences has been removed by the banks who received the information. In addition, the PBA is working on another, third edition of "Good practices of serving people with disabilities by banks". The aim of PBA's work is to ensure that banks' activities and behaviour of employees are professional and tailored to the individual needs of each client.

The PBA also received a note about the limited availability of the hotline system for blocking payment cards for people with hearing difficulties[213]. Due to the fact that this is not a completely new service, but a solution designed to enable customers to block payment cards issued in the Republic of Poland via a single hotline, it was not possible to implement a solution allowing access to deaf persons, because the base solutions did not provide for this possibility. However, the PBA has been working intensively for a long time on a solution that uses the live video feed from, e.g. a smartphone or tablet camera to allow people using sign language to communicate with a bank employee[214].

Another important issue in providing services to people with disabilities and the elderly recognized by the Office of Competition and Consumer Protection and the PBA is the use of new technologies. For example, handling and accessing bank accounts through the Internet (on the one hand – lower the cost of maintaining the account, on the other the requirement to have a computer, Internet access and knowledge of computer software) can significantly limit the access to some financial services for a specific group of consumers. The described phenomenon, however, has to do with the so-called digital divide, and not necessarily a deliberate act of discrimination against a certain group of recipients of offered services. Therefore, the Banking Ethics Committee has developed a detailed document containing good practices, which include, among others, the issues of creating products, advertising products or before and after sale care, which in the case of the elderly is of particular importance.

g) Commercial practices concerning fuel and energy supply to people with disabilities and the elderly

Basing on its activity, the Energy Regulatory Office pointed[215] to issue similar to the aforementioned problem of utilising new technologies to support the elderly. In the competitive market of electricity and gas trade, an increasing number of retailers do not always fight for the customer honestly, which manifests itself by reprehensible practices described

[213] Hotline available at (+48) 828 828 828.
[214] More in: ‚Dobre praktyki obsługi osób z niepełnosprawnościami przez banki".
[215] Letter of 18 January 2016.

by customers in complaints on sales representatives hired by energy companies. The addressees of the presented practices were older people, which qualifies this behaviour as discrimination on grounds of age or of disability (e.g. auditory, visual). The elderly are not only more susceptible to marketing techniques used by salesmen, but also are less able to verify the information, e.g. via the Internet, which may be a reason for directing offers to this particular age group more frequently.

The applicants most often pointed out that representatives of energy companies:

- created an atmosphere that does not allow for quiet familiarisation with the offer or documents, including draft agreements provided for signature,
- exerted pressure on the conclusion of agreements,
- did not present customers with complete and reliable information about the offer and on the rights and obligations of the parties when changing their electricity or gas supplier,
- mislead confused seniors – did not inform that by signing the new agreement, they change their electricity or gas supplier.

In the opinion of the Office, the use of small font that are difficult to read by the elderly or visually impaired, as well as the mechanism of multiple references within the documents that makes it lack transparency, coherence and understanding to consumers in documents related to changing one's electricity/gas supplier may constitute indirect discrimination. The Office is responding to this occurrence by carrying out educative and information activities that aim to draw the customer's attention to possible unfair trade practices.

h) Access to postal and telecommunication services for people with disabilities

Every year, the President of the Office of Electronic Communications conducts inspections, which aim to provide information, whether the provider of universal postal services (the designated operator) ensures the access to rendered services for people with disabilities[216]. Existing data pertaining to post offices controlled by the OEC indicate that the adaptation of urban and rural branches remains at a similar level and does not improve significantly compared to previous years. The counters and access to post boxes are adjusted to needs of people with disabilities to the greatest extent (approx. 98% of controlled outlets), whereas outlets most rarely fulfil their obligation to accept consignments from people with disabilities in their place of residence (approx. 40% of controlled outlets).

[216] In accordance with Article 62 of the Act of 23 November 2012 on Postal Law (Journal of Laws, item 1529, as amended).

i) Facilitations for people with disabilities in audio-visual works

In July 2015, The National Broadcasting Council[217] adopted a position of recommendation on the production and quality of audio description in audio-visual works, which is designed to help broadcasters and individuals implementing this facilitation in maintaining quality standards, and advise consumers to take advantage of this facility – to serve as a guide as to the quality they should be expecting from television broadcasters. In addition, between November and December 2015, the NBC ran a public consultation programme in regard to a draft position on the quality and method of subtitling for the deaf in audio-visual works. The position may be adopted by the National Broadcasting Council in early 2016.

In addition, the NBC engaged in works on the amendment of the Act on Broadcasting, signalling the need to gradually increase the amount of facilitations in television programs (audio description, subtitles for the deaf, sign language) for persons with disabilities.

j) Social Cohesion Study

Surveys conducted by the Central Statistical Office[218] take into account a number of social characteristics, such as gender, age, disability, place of residence, etc., so that the results of the CSO research can serve a source for monitoring equal treatment.

In 2015, the Social Cohesion Survey was carried out, with the aim to gather information allowing to make comprehensive assessments on the quality of life. This study also included three questions relating directly to the problem of discrimination, both the subjective perception of discrimination (through the indication of groups the respondent considers to be discriminated in Poland), as well as the respondent's experiences related to discrimination against his person and others. The results of research in this area will be presented in the publication *Jakość życia w 2015 r. Wyniki Badania spójności społecznej* (*Quality of Life in 2015. Results of the Social Cohesion Study*), which will be published in the first half of 2016.

k) The principle of equal treatment in the information of the Supreme Audit Office[219]

In 2015, the Supreme Audit Office carried out nine audits which, to varying degrees, displayed the issues related to the observance of the principle of equal treatment and non-discrimination. Gaining knowledge about the dangers of discrimination of deaf people was possible as a result of the audit concerning the provision of public services to users

[217] Letter of 20 January 2016.
[218] Letter of 20 January 2016.
[219] Letter of 8 February 2016.

of sign language, which was completed in 2015[220]. Whereas, the information on compliance with the principle of equal treatment and non-discrimination on grounds of disability was achieved as a result of the audit *Wykorzystywanie przez samorządy powiatowe środków Państwowego Funduszu Rehabilitacji Osób Niepełnosprawnych*[221] (*The use of funds from the State Fund for Rehabilitation of Disabled Persons by district governments*).

The issue of equal treatment in access to goods and services was present in the audit on *Pomoc społeczna dla uchodźców*[222] (*Social assistance for refugees*) completed in March 2015. The rights and needs of the Roma minority have been identified in the audit carried out by the Supreme Audit Office on the topic: *Podejmowanie i wykonywanie przez administrację publiczną zadań na rzecz praw i potrzeb mniejszości romskiej w Polsce*[223] (*Undertaking and performing public administration tasks for the rights and needs of the Roma minority in Poland*). In January 2015, the Office completed the audit on *Wykonywanie zadań w zakresie współpracy z Polonią i Polakami za granicą ukierunkowanych na podtrzymywanie więzi z krajem i wspomaganie migracji powrotnych*[224] (*Performing tasks aimed at maintaining ties with the country and the support of return migration in cooperation with the Polish community and Poles abroad*).

Among the groups exposed to discrimination and unequal treatment in society there are, among others, families in difficult situations and in need of support. These also include dysfunctional families. The audit on *Działania organów administracji publicznej w sytuacji zagrożenia odebrania dzieci rodzicom*[225] (*The activities of public administration in the risk of removing children from under parental custody*), conducted in connection with the suggestion of the Commissioner. The Office assessed the correctness and efficiency support provided by social welfare centres in the emergency of removing children from parental custody.

The audit *Dostępność podręczników szkolnych*[226] (*The availability of school books*) concerned equal treatment in the education system, whereas discrimination on the labour market was targeted by the audit *Realizacja przez powiatowe urzędy pracy programów specjalnych*[227] (*Implementation of special programmes by District Employment Offices*).

The following audits were pending completion in 2015:

– Pomoc osobom dotkniętym przemocą w rodzinie[228] (*Help for people affected by domestic violence*) – the objective is to assess whether victims of domestic violence receive adequate assistance from the public services?

[220] Audit P/14/105.
[221] Audit P/14/047.
[222] Audit P/14/049.
[223] Audit P/14/119.
[224] Audit P/14/010.
[225] Audit P/15/075.
[226] Audit P/14/025.
[227] Audit P/15/076.
[228] Audit P/15/046.

– Karta Dużej Rodziny jako element polityki rodzinnej państwa[229] (*Large Family Card as part of the state family policy*) – the aim is to assess whether the National Large Family Card provides support for large families?
– Dostępność publicznego transportu zbiorowego dla osób niepełnosprawnych w miastach na prawach powiatu (*Availability of public transportation for people with disabilities in cities with district rights*)[230] – the aim is to assess whether public transportation in cities with district rights is tailored to the needs of people with disabilities?
– Świadczenie pomocy osobom starszym przez gminy i powiaty[231] (*Provision of assistance to the elderly by communal and district authorities*) – its objective is to check whether local government units provide access to care and specialist services in the place of residence, as well as stay in residential care homes compliant with the current standards of services?

The results of these audits will be published in 2016.

[229] Audit P/15/045.
[230] Audit P/15/069.
[231] Audit P/15/044.

VI. Conclusions and recommendations on actions required to ensure the observance of the principle of equal treatment and the protection of the rights of persons with disabilities

The right of all individuals to equal treatment and protection against discrimination is a universal right recognized both by the Constitution of the Republic of Poland, as well as by the Poland binding international agreements. The primary purpose of the enactment of the Act on Equal Treatment was the immediate introduction of effective, proportionate and dissuasive sanctions in case of non-compliance with the law. The Commissioner for Human Rights, as an independent body for the implementation of the principle of equal treatment, has repeatedly stressed that **guarantees of equal and effective protection against discrimination have not been sufficiently provided in Poland.**

After almost five years after the entry into force of the Act on Equal Treatment, the first final judgement[232] was issued in a case in which claims were founded on the provisions of this Act. These proceedings confirmed that the interpretation of the scope of application of the Act on Equal Treatment may raise reasonable doubts, which further weakens the legal protection granted to victims of discrimination. It is therefore necessary to **urgently amend the Act on Equal Treatment**, and in particular **provide equal protection to all groups exposed to discrimination, as well as clarify the provisions governing the type of sanctions** for violating of the principle of equal treatment.

Study[233] carried out on behalf of the Commissioner show that 85% of people who have experienced discrimination in the last year have not reported this fact to any public institution. This confirms the belief that **the number of court cases relating to the infringement of the principle of equal treatment is far out of proportion to the actual scale of discrimination in Poland.** What is more, many Poles do not know that discrimination is prohibited in such areas as employment and the labour market (27%) or access to goods and services (40%). **This justifies the need for the implementation of the compulsory anti-discriminative education at all stages of learning.**

In order to strengthen the protection against discrimination, it is worth to consider the available instruments of international law. The Commissioner, therefore, recommends the **ratification of Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms**, which forms a general prohibition of discrimination, as well as the **Optional Protocol to the Convention on the Rights of Persons with Disabilities,** which provides for the mechanism of individual complaints in cases of infringement of the provisions of this Convention. In the Commissioner's assessment, the signature and ratification of these protocols will contribute significantly to the improvement of the situation of those discriminated against, and any recommendations made as a result of resolved complaints can be a valuable clue for Poland in this regard.

[232] Judgement of the Regional Court in Warsaw of 18 November 2015 in case V Ca 3611/14, not published.

[233] Study commissioned by the Commissioner for Human Rights and carried out by TNS Polska "Świadomość prawna w kontekście równego traktowania", December 2015.

1. Preventing discrimination on grounds of racial, ethnic or national origin

In connection with the influx of numerous groups of migrants to Europe, the international community, and in particular the European Union, is facing the challenge of ensuring adequate support for those most in need of help. It is regrettable that media coverage in 2015 was dominated by reports pointing to the negative effects of the engagement of the Polish state and society in solving the current crisis. In the Commissioner's assessment, it is necessary to intensify efforts to counter the growing tide of hate crimes against migrants. Social consent and the absence of a rapid and adequate response on the part of the competent public authorities to event motivated by hatred are conducive to the build-up of hostile attitudes that perpetuate negative stereotypes and prejudices. In this context, **the role of the Police and the prosecutor's office in the consistent and effective prosecution and punishment of perpetrators of hate crimes punishable by the Criminal Code is vital.** Hate speech on the Internet and the difficulty of determining the identity of the perpetrators of criminal acts committed through on-line forums or social networks is also a particularly negative phenomenon. Therefore, it is necessary to develop mechanisms to improve the efficiency of the prosecution of this type of crimes, as well as consider **allowing redress in civil proceedings by applying the legal mechanism of the so-called John Doe lawsuit,** which in specific situations would allow to initiate proceedings against an anonymous person, whose personal information may be determined during the course of the proceedings.

In connection with the planned relocation of some foreigners currently residing in the European Union, it is desirable to develop such an approach to the phenomenon of migration, which is defined as *Reception Culture*. In the first place, the practice of the Border Guards and of the courts consisting in placing foreigners in guarded centres should undergo change in favour of **a more frequent use of non-isolation measures, which are alternative to detention.** It is necessary to undertake legislative initiative aimed at the establishment of **a total ban on the placing minors and their guardians in guarded centres for foreigners.** It is also necessary to create a comprehensive programme for the support and rehabilitation of persons who have been victims of torture or other inhuman treatment, whether in the country of origin, or in the course of the journey.

The problem of detention is also linked to the observance of the right to education of minor migrants placed in detention centres. This group of foreigners is completely excluded from the general education system. Teaching children in guarded centres has never been regulated and takes place only on the basis of an agreement between the Border Guard, public schools and education authorities, and therefore depends only on the will and capabilities of these institutions. In this situation, it is necessary to **adopt appropriate legislation that will enable the children from guarded centres to pursue education in mainstream schools, on the principles applicable to all other exercising the right to education in Poland.**

The problem **of living conditions and access to basic social rights of the Roma minority** remains unresolved for many years. The Commissioner calls for the creation of a comprehensive program, independent of the currently implemented "Integration of the Roma community in Poland for the years 2014-2020", whose only purpose would be to plan and finance the process of improving residential conditions Roma settlements throughout the Poland. **One should also strongly avoid the segregation of Roma children in the education system.** Roma children should learn in public schools, in classes with their Polish peers. Therefore, it is necessary to look at the practice of assigning Roma children to special education solely because of the lack of sufficient knowledge of the Polish language.

The group of Romanian Roma who, for various reasons, are not able to regulate their stay in Poland, are particularly exposed to social exclusion and discrimination. It is therefore necessary to **simplify the registration procedures in Poland for citizens of the European Union**, including the Romanian Roma. To this end, when assessing a given foreigner's financial resources to reside in the territory of Poland, one can take into account the participation of the EU citizen in the aid programmes co-financed by the EU. This will compensate for the difficulties with registering residence on the territory of Poland, and thus facilitate Roma access to social assistance benefits.

2. Combating discrimination on grounds of religion, denomination or belief

A particularly important issue in the field of prevention of discrimination on grounds of religion or belief are the ethics lessons and lessons of religion for minority faiths in the system of school education. In the Commissioner's assessment, **the adopted legal arrangements, though contributing to the improvement of the situation, do not protect individual religious and social groups to a sufficient degree,** and access to minority denominations' religion lessons and lessons of ethics is not always guaranteed. The most important issues in this regard include refusals to organise lessons due to a small number of volunteers, although it is the responsibility of the school or supervisory body to organize lessons of ethics or religious minority even on request of a single student. People seeking to organise such lessons often meet with disregard for their proposals, ignoring applications or exerting pressure on the part of the child in the classroom to participate in the Catholic religion lessons together with the rest of the class. In the Commissioner's assessment, it would be advisable to adopt regulations imposing on school principals the requirement for fair information before the parents and students about the possibilities and the principles of organising lesson of ethics and minority religion lessons, as well as the authorisation of the representatives of the churches and religious societies to request in regard to the need to organise lessons of religious minorities.

In the area of the prevention of discrimination on grounds of religion, there are also the conclusions and recommendations of the Commissioner relating to combating crimes and hate speech, which often also affect religious minorities.

3. Combating discrimination on grounds of sex

One of the main problems in the area of the protection of women's rights remains the issue of domestic violence and gender-based violence, including the need for isolating the perpetrator from the victim. Having in mind the standards resulting from the provisions of the Convention on Preventing and Combating Violence Against Women and Domestic Violence, the Commissioner **recommends the adoption of legal measures that allow the competent authorities to isolate the perpetrator of domestic violence, in situations of imminent danger, from victim or person at risk, for an appropriate period and to prohibit the perpetrator from entering the premises occupied by the victim** or person at risk and contacting them. It is also necessary to **launch as soon as possible a nationwide, 24-hour free hotline for women-victims of violence,** in order to provide advice and to enable the notification of appropriate services in life- or health-threatening emergencies. The contents of the Blue Card form also require an analysis, including as to the correctness of advice contained therein, as well as the effectiveness of assistance and support for victims of domestic violence.

Economic violence may constitute a special form of violence, which take the shape of alimony evasion. **Single parents bringing up children affected by non-alimony are mostly women, therefore, non-payment of child support and the ineffectiveness of State authorities in their enforcement may constitute a manifestation of discrimination and unequal treatment.** The restrictions on access to benefits from the alimony fund are also a significant problem. Over the last seven years the maintenance fund benefits and the amount of income criterion have remained unchanged. With the decline in the real value of money, the increase in costs of living, and above all with the increase of the amount of the minimum remuneration for work, this omission involves a serious and very palpable consequences. In the Commissioner's assessment it is therefore necessary to abolish the income criterion in accessing the benefits from the Fund, or increase its amount.

The Commissioner is also monitoring issues of equal access of women to health care, including the area of reproductive health. In this context, **the real access of patients to pharmacological methods of anaesthesia during childbirth raises certain doubts, including the differences in access to health benefits depending on the place of residence.** Although pharmacological anaesthesia during childbirth is available as part of the guaranteed medical services, and in the absence of contraindications the patient has the right to request it, this right, in practice, remains illusory.

In the Commissioner's assessment, reasonable constitutional doubt is also raised by **the lack of appropriate transitional provisions allowing for the use of embryos from cells of anonymous donor** by lonely women who – before the entry into force of the Act on Infertility Treatment – donated them to the relevant clinics. In addition, as a result of the judgement of the Constitutional Tribunal, which annulled certain provisions governing the so-called clause of conscience, the Commissioner recognises the need for urgent action to **establish mechanisms that will allow the patient to get information about where a health service could realistically be performed, if its performance was denied due to conscience clause.**

Balanced reconciliation of family and professional roles is also an important element of the life of women and men, and hence the equal treatment of parents in the labour market. In this area, the Commissioner recommends such an amendment to legislation, as to target the **instruments for balancing the roles equally to both men and women.** Permissions associated with parenting should be vested in the father regardless of whether the mother of the child is entitled to them. It is also necessary to construct such a parental leave, so as to reserve its part for each parent, without the possibility of a waiving it for the other parent, with the exception of special situations. Special emphasis should be put on increasing the availability of childcare institutions, taking into account the inequalities in access to these institutions in urban and rural areas. Finally, the availability of flexible forms of employment for working parents is insufficient, which is associated with a low legal awareness on the side of the employees and employers.

4. Combating discrimination on grounds of sexual orientation and gender identity

The Commissioner is receiving **information about a large scale violence caused by prejudice, including homophobia and transphobia.** A firm response of the state to manifestations of this kind of violence constitutes a guarantee of the implementation of international standards for the protection of the rights and freedoms of the victims of crimes motivated by hate. This category of crimes penalised currently in the Criminal Code includes offences committed due to nationality, race, ethnic origin, religion and the lack thereof. In the Commissioner's assessment, this list should be supplemented by conditions such as sexual orientation, gender identity, age, and disability. It is also worth to take account of the discriminatory nature of the crime, among other legal directives of the judicial dimension of the penalty set out in the Criminal Code.

The complaints directed to the Commissioner also show that the **right to equal treatment of non-heterosexual persons is commonly violated in many everyday situations**, such as access to health care, the use of goods and services, or official dealings. The current Act on Civil Registry Records, which does not take account of the changing social situation,

also requires certain reflection. It causes difficulties in obtaining birth certificates by transgender persons, or people remaining in same-sex relationships that are legally registered in another country. The problem remains also as to the certificate about the eligibility of entering into marriage abroad, as well as the right to bury the deceased partner of the same sex.

A complex legal act regulating the issue of adjusting registered sex of transgender persons and the legal consequences of such a change still has not been adopted. This gap in the existing legislation contributes to the social exclusion of transgender persons and constitutes a serious obstacle to the observance of their rights. It is important not only to simplify the legal procedures of gender correction, but also the creation of a guarantee of respect for human dignity and personal integrity of transgender persons.

5. Combating discrimination on grounds of age

The most important issues in the area of the protection of the rights of older people are the difficulties in gaining access to social rights such as the right to health care financed from public funds, the right to a decent standard of living and social security, or proper care provided at the level of local communities. In addition to the rights related strictly with the state social policy, restrictions caused by the breach of the principle of equal treatment on grounds of age are also important.

The omission of the more specific needs of the elderly in the social policy system may be a manifestation of indirect discrimination on grounds of age. The rules for determining the amounts of pensions schemes free of deductions and enforcement serve as an example. In the Commissioner's opinion, the legislature – while shaping the system of deductions from pension schemes – should take into account the principle of social justice, which remains closely related to human dignity. Meanwhile, a comparison between income criteria, which aim to ensure minimum subsistence, and the amount clear of deductions and debt enforcement – as set out in the pensions act – indicates that the free amount, corresponding to 50% of the lowest pension, lies below the poverty line.

In the Commissioner's assessment, **age restrictions in the exercise of a function or performing specific occupations are also a particular concern.** Regulations concerning certain professions of public confidence, such as notaries or court enforcement officers, require an in-depth analysis.

The Commissioner also recognises the needs related to shaping the broader physical environment while taking into account the specific needs of the elderly. Space properly adapted to the needs of seniors enables them to retain their social and professional activity. It is particularly important in this respect to support actions carried out by local governments for the benefit of **senior-friendly public spaces.**

The Commissioner also supports the development of **a new UN Convention relating to the rights of older people.** It would represent not only an important instrument

of international law for combating discrimination on grounds of age, but also would contribute to the more effective implementation of **a comprehensive human rights-based senior policy** both at national and local level. A complex approach to the challenges of an ageing society can effectively eliminate the social exclusion of older people.

6. Combating discrimination on grounds of disability and the implementation of the provisions of the Convention on the Rights of Persons with Disabilities

In the Commissioner's assessment, in order to fully exercise the rights established by the Convention on the Rights of Persons with Disabilities, it is necessary to adopt **a national strategy for the implementation of its provisions, as well as the ratification of the Optional Protocol,** which establishes the individual complaint mechanism in cases of violation of the rights granted by that Convention. The most important changes of a general nature include the development and implementation of **a uniform system of deciding** on the functioning of people with disabilities in all areas of life, including education, labour, social security and health care. This system should be based on a functional diagnosis of persons with disabilities, using a definition based on the social model of disability.

It is necessary to **abolish the institution of incapacitation** and introduce various forms of support based on the model of supported decision-making and to **withdraw from marriage prohibitions** so as to ensure the disabled access to the right to marry on the basis of a freely expressed and full consent of the future spouses. The problem of deprivation of legal capacity connects to the procedure of issuing consent to place of a completely incapacitated person in a residential care home. At present, a person with intellectual or mental disability, substituted by their legal guardian, cannot challenge the decision of the Custody Court to express consent to place them in a nursing home. In addition, in the event of a change of the factual circumstances (improving mental state, the ability to take advantage of other people's care) there is also no possibility for the court to change that decision.

In order to adapt national legislation to the standards under the Convention it is also necessary to **strengthen the protection of persons with disabilities against discrimination**, at least at the level of the guarantees in the area of preventing discrimination on grounds of race, nationality or ethnic origin. Especially sensitive areas in this respect include the access to goods and services, the use of healthcare services, as well as access to education and higher education. The most serious problems identified in the latter area, include **removing people with disabilities from the group of potential students of certain universities.** With this in mind, it should be stressed that any restrictions in terms

of access to academic education must always be based on objective and reasonable considerations, and refer to individual people, not to groups of people with disabilities in general.

The problem of access to information for people with disabilities also remains. It is therefore necessary to **adapt all the websites of public institutions** to the needs of persons with disabilities, as well as to take measures for the realization of the rights of the deaf and deafblind to communicate with public administration authorities by methods of non-verbal communication.

It is also challenging to ensure that people with intellectual or mental disabilities **will not be arbitrarily deprived of active and passive electoral rights, as well as the creation of conditions for the implementation of the freedom of association and freedom of assembly** for all persons with disabilities.

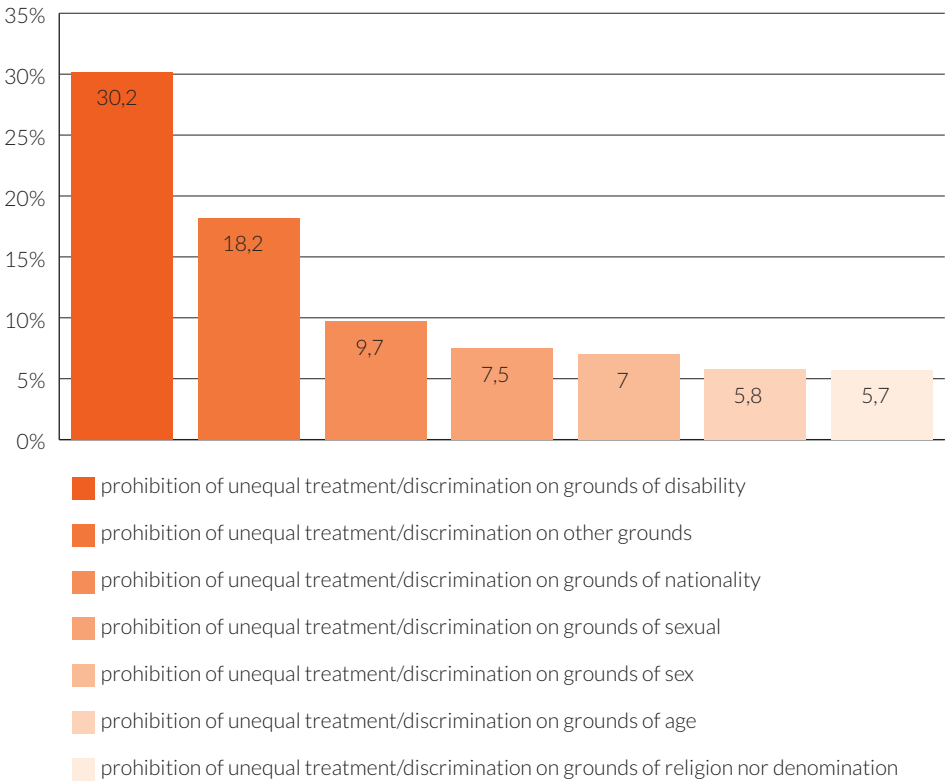
Finally, the remaining unsolved problem includes persons with intellectual or mental disabilities in penal institutions. **The lack of systemic solutions for the proceedings in the case of doubt as to whether the detained, due to their intellectual or psychological disability, should be confined in penal isolation remains a particular concern.** Criminal law cannot substitute for the social policy of the state, which is the case when people with a severe degree of mental or intellectual disability remain in prison.

VII. Statistical data and other information concerning the implementation of the principle of equal treatment

1. Received applications concerning equal treatment and prohibition of discrimination

In 2015, the Commissioner received **787** cases relating to the issue of equal treatment.

Main problem areas concerning equal treatment

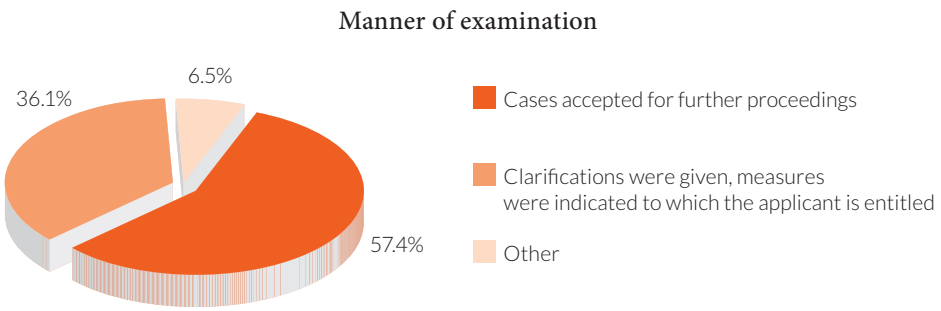


2. Subject matter of new cases (applications) directed to the Commissioner concerning the issue of equal treatment and prohibition of discrimination (according to type of discrimination)

No.	Type of discrimination	Number	%
1.	the principle of equality before the law	13	1,7
2.	prohibition of unequal treatment/discrimination	28	3,6
3.	prohibition of unequal treatment/discrimination on grounds of sex	55	7,0
4.	prohibition of unequal treatment/discrimination on grounds of religion or denomination	45	5,7
5.	prohibition of unequal treatment/discrimination on grounds of sexual orientation	59	7,5
6.	prohibition of unequal treatment/discrimination on grounds of age	46	5,8
7.	prohibition of unequal treatment/discrimination on grounds of nationality, race	76	9,7
8.	prohibition of unequal treatment/discrimination on grounds of disability	238	30,2
9.	prohibition of unequal treatment/discrimination of social and professional groups	6	0,8
10.	prohibition of unequal treatment/prohibition of tax discrimination	6	0,8
11.	prohibition of unequal treatment/discrimination of people with no permanent residence registration	5	0,6
12.	prohibition of unequal treatment/discrimination on the grounds of race or ethnic origin	30	3,8
13.	prohibition of unequal treatment/discrimination on grounds of belief (including the lack thereof)	9	1,1
14.	prohibition of unequal treatment/discrimination on grounds of political opinion	--	--
15.	prohibition of unequal treatment/discrimination on grounds of gender identity	8	1,0
16.	prohibition of unequal treatment/discrimination on grounds of material and legal situation	15	1,9
17.	prohibition of unequal treatment/discrimination on grounds of education, occupation	5	0,6
18.	prohibition of unequal treatment/discrimination on other grounds	143	18,2
In total		787	100

3. Cases examined (received in 2015)

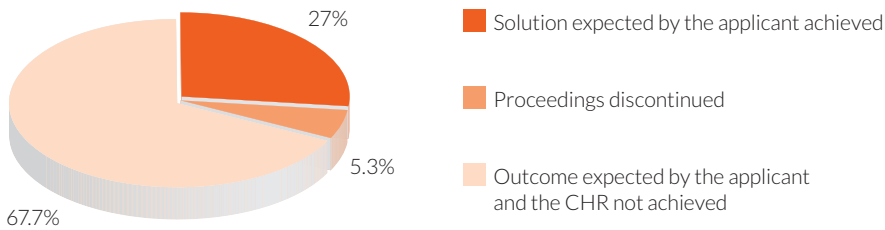
	Manner in which the case was examined		Number	%
1	2		3	4
Cases accepted for further proceedings	1	**In total (2+3)**	**465**	**57,4,0**
	2	cases accepted for further proceedings	340	42,0
	3	as general motions	125	15,4
clarifications were given, measures were indicated to which the applicant is entitled	4	**In total (5)**	**292**	**36,1**
	5	clarifications were given, measures were indicated to which the applicant is entitled	292	36,1
Other	6	**In total (7+9)**	**53**	**6,5**
	7	complaint referred to a competent authority	16	2,0
	8	complaint returned to be supplemented with necessary information	15	1,9
	9	not accepted for further proceedings**	22	2,6
In total			**810**	**100**



4. Proceedings completed in undertaken cases

Effects		Manner of completion	Number	%
1		2	3	4
Solution expected by the applicant achieved	1	**In total (2+3)**	**102**	**27,0**
	2	Applicant's claims confirmed	69	18,3
	3	General motion of the CHR acknowledged	33	8,7
Proceedings discontinued	4	**In total (5+6)**	**20**	**5,3**
	5	Proceedings pending (ongoing procedure)	1	0,3
	6	CHR refrained from further proceedings (objective reasons)	19	5,0
Outcome expected by the applicant not achieved	7	**In total (8+9+10)**	**256**	**67,7**
	8	Applicant's claims not confirmed	122	32,3
	9	General petition of the CHR not acknowledged	134	35,4
	10	Measures available to the CHR exhausted	0	0,0
In total			**378**	**100**

Proceedings completed in undertaken cases



5. Meetings, seminars and conferences on the implementation of the principle of equal treatment, in which the Commissioner for Human Rights or the Deputy Commissioners for Human Rights participated in 2015

1.	Participation of the Commissioner for Human Rights in the seminar "Imigrants in Poland. Between national interest and human rights" organised by the Cardinal Stefan Wyszyński University. Warsaw.	14.02.2015
2.	Participation of the Deputy Commissioner for Human Rights in the conference "Nationwide Meeting of the council of elders. Zoom on the councils of elders. Diagnosis and challenges", organised by the Sejm Senioral Policy Commission and the Association of Creative Initiatives "ę". Warsaw.	16.02.2015
3.	Participation of the Commissioner for Human Rights in the IV Session of the Police Platform against Hate under the slogan: "The police and the modern environmental crime prevention in the fight against and prevention of hate crimes" organised by the Office of the Commissioner for Human Rights. Warsaw.	20.02.2015
4.	Participation of the Commissioner for Human Rights in the conference "About depression among good words" organised by the Office of the Commissioner for Human Rights as part of the National Depression Awareness Day. Warsaw.	23.02.2015
5.	Participation of the Commissioner for Human Rights in a ceremonial meeting, during which institutions and organisations awarded in the 1st edition of the project with a record in the "Golden Book of Good Practices for Social Participation of Elderly Persons" were rewarded with diplomas. Warsaw.	16.04.2015
6.	Seminar on voting arrangements concerning the elderly and people with disabilities, organised by the Office of the Commissioner for Human Rights. Warsaw.	24.04.2015
7.	Participation of the Commissioner for Human Rights in the 10th National Seminar of the European Network of Ombudsmen on the theme "Ombudsmen against discrimination". Warsaw. Kraków. Oświęcim.	28-29.04. 2015
8.	Participation of the Commissioner for Human Rights in a conference organised by the Polish Multiple Sclerosis Society, the Urszula Jaworska Foundation, the NeuroPositive Foundation and the initiators of the "MS – fight for yourself" campaign as part of the World MS Day. Warsaw.	27.05.2015
9.	Participation of the Deputy Commissioner for Human Rights in the conference "The concept of equality body – past, present, future" organised by the Government Plenipotentiary for Equal Treatment. Warsaw.	15.06.2015
10.	Participation of the Commissioner for Human Rights in the VII Congress of Women. Warsaw.	12.09.2015
11.	Participation of the Commissioner for Human Rights in the Jerzy Zimowski Award ceremony. This distinction is awarded for activities for the benefit of social groups in emergency situations, and in particular for the benefit of migrants and refugees. Warsaw.	16.09.2015
12.	Participation of the Commissioner for Human Rights in the 1st Congress of Persons with Disabilities. Warsaw.	16.09.2016
13.	Meeting between the Commissioner for Human Rights with the representatives of LGBTQIA organisations.Warsaw.	18.09.2015

14.	Participation of the Deputy Commissioner for Human Rights in the conference "Open the Gates of tolerance" under the honorary patronage of the Commissioner. Sopot.	21.09.2015
15.	Participation of the Commissioner for Human Rights in a meeting of the Coalition for Equal Opportunities. Warsaw.	22.09.2015
16.	Participation of the Commissioner for Human Rights in the conference "Assistance to dependents –safe aging", organised by the "Aid for dependant" Coalition. Piła.	23.09.2016
17.	Participation of the Commissioner for Human Rights in the Human Dimension Implementation Meetings organised by the Office for Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe. Warsaw.	24.09.2015
18.	Participation of the Commissioner for Human Rights in the nationwide action of removing hateful inscriptions on the streets of Polish cities, which was organised as part of the HejtSTOP programme. Warsaw.	26.09.2015
19.	Participation of the Commissioner for Human Rights in the debate "Welcome to Europe? Refugees in Poland and Germany", organised as part of the Refugee Solidarity Day by the Institute of Public Affairs and the Friedrich Ebert Foundation. Warsaw.	13.10.2015
20.	Participation of the Deputy Commissioner for Human Rights in the conference "Practical aspects of the Council of Europe Convention on preventing and combating violent against women and domestic violence" organised by the Supreme Bar Council. Warsaw.	15.10.2015
21.	Inauguration of the Silesian Platform Against Hatred. The initiators include: the Representative of the Commissioner for Human Rights in Katowice, Silesian Voivode's Plenipotentiary for Equal Treatment, Plenipotentiary for Human Rights of the Provincial Commander of the Police, Plenipotentiary of the Province Marshal for NGOs. Katowice.	28.10.2015
22.	Visitation of Roma settlements in Maszkowice (Łącko Commune) and in Koszary (Limanowa Commune).	28-29.10. 2015
23.	Seminar "Anti-Semitism is not a view. The Jewish subject, anti-Semitic content and argumentation schemes in school books" organised by the Czulent Jewish Association in cooperation with the Office of the Commissioner. Warsaw.	9.11.2015
24.	Round table on combating hate speech organised by the Office of the Commissioner.	13.11.2015
25.	Participation of the Deputy Commissioner for Human Rights in the conference „Stop sexual abuse. To heal and protect" organised by the international non-governmental organisation SNAP Network and the "Be not afraid" Foundation. Poznań.	14.11.2015
26.	Meeting between the Commissioner for Human Rights and the NOMADA Association, acting for the benefit of the Roma Community. Wrocław.	16.11.2015
27.	Participation of the Deputy Commissioner for Human Rights in a conference inaugurating the "I give birth – I have rights" information campaign of the Childbirth with Dignity Foundation. Warsaw.	23.11.2015
28.	Participation of the Deputy Commissioner for Human Rights in the 5th Nationwide Conference of Women in Prison Services on the theme "Woman – the leader". Popów.	24-26.11. 2015
29.	Regional meeting between the Commissioner for Human Rights and non-governmental organisations form the West Pomerania Province. Szczecin.	24-27.11. 2015
30.	Participation of the Commissioner for Human Rights in the conference „One can be a deaf, happy person" organised by the Office of the Commissioner and the Polish Foundation For The Hearing-impaired Children ECHO. Warsaw.	02.12.2015
31.	Meeting between the Commissioner for Human Rights and university students concerning refugees, organised by Gazeta Prawna and the Warsaw University. Warsaw.	7.12.2015